SESSION LAWS

OF

HAWAII

PASSED BY THE

TWENTIETH STATE LEGISLATURE

STATE OF HAWAII

REGULAR SESSION
1999

Convened on Wednesday, January 20, 1999
and
Adjourned sine die on Tuesday, May 4, 1999

Published under Authority of
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by the
Revisor of Statutes
State of Hawaii
Honolulu, Hawaii

PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 1999. The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

As authorized by Section 23G-16.5, Hawaii Revised Statutes, statutory material that is being repealed is bracketed, and new material is indicated by underscoring. However, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Wendell K. Kimura
Revisor of Statutes

Honolulu, Hawaii
July 21, 1999

STATE OF HAWAII
ELECTED OFFICIALS AND LEGISLATIVE OFFICERS

UNITED STATES CONGRESS

Senate:	House of Representatives:
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Daniel K. Akaka	Patsy T. Mink

STATE EXECUTIVE OFFICERS

Governor of Hawaii ..... Benjamin J. Cayetano
Lieutenant Governor ..... Mazie K. Hirono

OFFICERS AND MEMBERS OF THE TWENTIETH STATE LEGISLATURE REGULAR SESSION 1999

SENATE

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Vice President ..... Avery B. Chumbley
Clerk ..... Paul T. Kawaguchi

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Eleventh District—(Oahu)
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Twelfth District—(Oahu)
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Thirteenth District—(Oahu)
Rod Tam (D)

Fourteenth District—(Oahu)
Suzanne N. J. Chun Oakland (D)

Fifteenth District—(Oahu)
Norman Mizuguchi (D)

Sixteenth District—(Oahu)
Norman Sakamoto (D)

Seventeenth District—(Oahu)
David Y. Ige (D)

Eighteenth District—(Oahu)
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Nineteenth District—(Oahu)
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Robert Bunda (D)

Twenty-Third District—(Oahu)
Bob Nakata (D)

Twenty-Fourth District—(Oahu)
Marshall Ige (D)

Twenty-Fifth District—(Oahu)
Whitney Anderson (R)

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HOUSE OF REPRESENTATIVES

Speaker ..... Calvin K.Y. Say
Vice Speaker ..... Marcus R. Oshiro
Clerk ..... Patricia A. Mau-Shimizu

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Thirty-Fourth District—(Oahu)
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Cynthia H. Thielen (R)

Fiftieth District—(Oahu)
David A. Pendleton (R)

Fifty-First District—(Oahu)
Kenny Goodenow (D)

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Session Laws of Hawaii
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ACT 1 H.B. NO. 85

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, the Legislative Reference Bureau, and the Ombudsman.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of $5,005,794 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 2000, including the 1999 regular session, Twentieth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1999 and 2000 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $7,254,882 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 2000, including the 1999 regular session, Twentieth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1999 and 2000 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1999 and 2000 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 1999 and 2000 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 19, 2000, the Senate and the House of Representatives shall each have their accounts audited and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 19, 2000.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provisions of section 78–15, Hawaii Revised Statutes, or by any other general statute. Until

otherwise prescribed by law, the expenses of such member shall be $130 a day as authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of $2,830,796 or so much thereof as may be necessary to the office of the legislative auditor for the following expenses:

(1) The sum of $2,019,850 for defraying the expenses of the office of the legislative auditor during fiscal year 1999–2000;
(2) The sum of $660,946 for defraying the expenses of the office of the state ethics commission during fiscal year 1999–2000; and
(3) The sum of $150,000 during fiscal year 1999–2000 for:
    (A) Performing special studies;
    (B) Improving capabilities for planning, programming, and budgeting;
    (C) Fulfilling other special requests made of the legislative auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives;
    (D) Legislative studies and contractual services for those studies; and
    (E) Such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of $2,229,349 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 1999–2000 including equipment relating to computer systems programming and operations.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of $728,892 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 1999–2000.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the following sums or so much thereof as may be necessary for defraying the expenses of the legislative information system:

(1) $600,000 to the Senate; and
(2) $600,000 to the House of Representatives.

This appropriation shall be used to pay for hardware, software, consultant, installation, material, supply, and other related costs associated with the legislative information system that have been or will be incurred. This appropriation shall take effect upon the approval of this Act and shall not lapse until June 30, 2000.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of $175,000 or so much thereof as may be necessary for the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings. This appropriation shall take effect upon the approval of this Act and shall be expended by the legislature for the purposes of this section. This appropriation shall not lapse until June 30, 2000.

SECTION 11. As of the close of business on June 30, 2000, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 12. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 13. This Act shall take effect upon its approval.

(Approved February 4, 1999.)

ACT 2 S.B. NO. 1639

A Bill for an Act Making An Emergency Appropriation for Kapolei High School.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Findings and purpose. The department of education desires to construct a new high school in the city of Kapolei to address the present condition of over enrollment and inadequate capacity at Campbell High School. The enrollment in the 1998–1999 school year is 2,301 students which will continue to increase as housing continues to be built in the Ewa, Kapolei, and Makakilo areas. Enrollment projections are 2,556 students in the school year 2000–2001 and 2,712 in school year 2001–2002 at Campbell High School which continues to confront many problems due to the large and excessive number of students on the campus. A new high school would reduce the enrollment at Campbell High School to a projected 2,213 students if the Kapolei High School opens in the year 2000 and to a projected 2,077 students in 2001. If the new high school opens in the year 2001, the projected enrollment at Campbell High School would be near 2,375 students in 2001. This emergency Act will provide the authorization to begin construction of the new high school by establishing a construction cost element in an existing act.

In order to allow the possibility that the new high school can open to grade 9 by September, 2000, it is necessary to begin construction as early as March 1, 1999. The start date will allow enough time for the construction of the minimum requirements to open the school: site improvements, highway and street connections, sewer and other infrastructure for the entire site, an administration building, library/media center, cafetorium/music building, classroom building, central air plant, and landscaping. A second classroom building must be constructed and funded in fiscal biennium 1999–2001 to be open in the year 2001 in order to accept grade 10 students.

SECTION 3. Act 328, Session Laws of Hawaii 1997, Section 140A, as amended by Act 116, Session Laws of Hawaii 1998, Section 5, is amended as follows:

(1) By amending Item G-19 to read:

"19.	404J60	IAO INTERMEDIATE SCHOOL, MAUI		
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE ARMORY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.		
		DESIGN	700	
		CONSTRUCTION		[4,800]

			4,000
[EQUIPMENT]			[200]
TOTAL FUNDING	AGS	700B	[5,000B]
			4,000B"

(2) By amending Item G-22 to read:

"22. 821151 KAPOLEI HIGH SCHOOL, OAHU

DESIGN AND CONSTRUCTION OF FIRST INCREMENT FOR NEW HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

DESIGN			4,000
CONSTRUCTION			1,000
TOTAL FUNDING	AGS	B	[4,000B]
			5,000B"

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved March 25, 1999.)

ACT 3 H.B. NO. 1151

A Bill for an Act Making An Emergency Appropriation for the Child and Adolescent Mental Health Division.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Although funds were appropriated to the department of health for the child and adolescent mental health division for the fiscal period beginning July 1, 1998, and ending June 30, 1999, a critical funding emergency now exists. The program will expend all appropriated funds before the end of the current fiscal year, and the department will be unable to meet its fiscal obligation to provide services to certain emotionally disturbed children and adolescents. The increases in case referrals and court-directed placements are the primary contributing factors to this financial situation.

The purpose of this Act is to appropriate moneys to prevent the reduction or discontinuance of services to certain emotionally disturbed children and adolescents.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $42,459,294 or so much thereof as may be necessary for fiscal year 1998–1999 to be used for services provided to certain emotionally disturbed children and adolescents.

SECTION 4. The sum appropriated shall be expended by the department of health for purposes of this Act.

SECTION 5. The department of health shall report to the legislature on the expenditure of the emergency appropriation for the child and adolescent mental health division and shall submit a report, no later than thirty days after the release of the funds appropriated by this Act, on the expenditures of the emergency appropriation, such report to include but not be limited to:

(1) The aggregate total of hours of services used;
(2) The number of students served;
(3) The range of services provided; and
(4) Any other pertinent information regarding the department's expenditure of these funds.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 1, 1999.)

ACT 4 S.B. NO. 1194

A Bill for an Act Relating to School Buses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§291C- School buses; zipper lanes.** Notwithstanding any other law to the contrary, the director of transportation shall allow school buses, regardless of number of occupants, to be used on contraflow lanes that have been designated as zipper or zip lanes by the department of transportation."

SECTION 2. Section 291C-221, Hawaii Revised Statutes, is amended by amending the definition of "high occupancy vehicle lane" to read:

"'"High occupancy vehicle lane" means a designated lane of a laned roadway where the use of the designated lane is restricted to school buses, vehicles carrying at least two persons, and to other vehicles as provided by rules adopted in accordance with chapter 91, or by county ordinance."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved April 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 5 H.B. NO. 792

A Bill for an Act Relating to Bail Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify that bail bond rates are not subject to insurance rate filing requirements. The legislature intends that bail bond rates be regulated under the bail law, rather than the insurance code article on rate regulation.

SECTION 2. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every insurer shall file in triplicate with the commissioner, except as to specific inland marine risks which by general custom of the business are not written according to manual rate or rating plans[,] and bail bonds subject to section 804-62, every manual of classifications, rules, and rates, every rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing shall state its proposed effective date, and shall indicate the character and extent of the coverage contemplated. The filing also shall include a report on investment income."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 6, 1999.)

ACT 6 H.B. NO. 982

A Bill for an Act Relating to Aquaculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall manage and administer the public lands of the State and minerals thereon and all water and coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life, wildlife resources, [aquaculture programs,] state parks, including historic sites, and all activities thereon and therein including, but not limited to, boating, ocean recreation, and coastal areas programs."

SECTION 2. Section 171-3, Hawaii Revised Statutes, is amended to read as follows:

"**§171-3 Department of land and natural resources.** The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer, and exercise control over public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forests, forest reserves, aquatic life [and aquaculture programs], aquatic life sanctuaries, public fishing areas, boating, ocean recreation, [and] coastal programs, wildlife, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned by law."

SECTION 3. Statutory material to be repealed is bracketed.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 6, 1999.)

ACT 7

H.B. NO. 1070

A Bill for an Act Relating to the Insurance Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [At least once a year, and whenever the commissioner determines it to be prudent, the commissioner, or a designated agent, shall visit each captive insurance company and] The commissioner or any examiner authorized by the commissioner may conduct an examination of any captive insurance company as often as the commissioner deems appropriate; provided that an examination shall be conducted at least once every three years. The commissioner or any authorized examiner shall thoroughly inspect and examine [its] the captive insurance company's affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article. [The commissioner, upon application, may enlarge the one-year period to three years; provided that the captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the commissioner by independent auditors approved by the commissioner.]"

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 6, 1999.)

ACT 8

H.B. NO. 1081

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 415-33, Hawaii Revised Statutes, is amended to read as follows:

§415-33 Voting of shares. (a) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

(b) Shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of the other corporation is held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

(c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by a duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. A shareholder may authorize another person to act as a proxy for the shareholder by:

(1) Executing a writing authorizing another person or persons to act as a proxy for the shareholder, which may be accomplished by the shareholder or the shareholder's authorized attorney-in-fact, officer, director, employee, or agent signing such writing or causing the shareholder's signature to be affixed to such writing by any reasonable means, including without limitation the use of a facsimile signature; or

(2) Transmitting or authorizing the transmission of a telegram, cablegram, facsimile, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent duly authorized by the person who will be the holder of the proxy to receive such transmission; provided that any such transmission shall specify that the transmission was authorized by the shareholder.

(d) A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to subsection (c) may be used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(e) If, not less than forty-eight hours prior to the time fixed for any annual or special meeting, any shareholder or shareholders delivers to any officer of the corporation, a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows: [each]

(1) Each shareholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the shareholder multiplied by the number of directors to be elected at the meeting; [each]

(2) Each shareholder shall be entitled to cumulate the votes of said shareholder and give all thereof to one nominee or to distribute the votes of said shareholder in such manner as the shareholder determines among any or all of the nominees; and [the]

(3) The nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees. The right to have directors elected by cumulative voting as aforesaid shall exist notwithstanding that provision therefor is not included in the articles of incorporation or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of incorporation or bylaws; provided that this right may be restricted, qualified, or eliminated by a provision of the articles of incorporation or bylaws of any corporation having a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended, which are either listed on a national securities exchange or traded over-the-counter on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System. This section shall not prevent the filling of vacancies in the board of directors, which vacancies may be filled in such manner as may be provided in the articles of incorporation or bylaws.

(f) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of the other corporation may prescribe, or, in the absence of any provision, as the board of directors of the other corporation may determine.

(g) Shares held by a personal representative may be voted by that individual, either in person or by proxy, without a transfer of the shares into that individual's

name. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held without a transfer of the shares into the trustee's name.

(h) Shares standing in the name of a receiver may be voted by the receiver, and shares held by or under the control of a receiver may be voted by the receiver without the transfer thereof into the receiver's name if authority to do so is contained in an appropriate order of the court by which the receiver was appointed.

(i) A shareholder whose shares are pledged shall be entitled to vote the shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(j) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, the shares shall not be entitled to vote on any matter and are not deemed to be outstanding shares."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 6, 1999.)

ACT 9 H.B. NO. 1179

A Bill for an Act Relating to Commercial Marine Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 189-2, Hawaii Revised Statutes, is amended to read as follows:

"**§189-2 Commercial marine license.** (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license as provided in this section.

(b) Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(c) The department [of land and natural resources] may adopt rules pursuant to chapter 91 necessary for the purpose of this [chapter] section and to set fees for commercial marine licensing.

[(b) All licenses issued under this section shall be in force one year from the date of issuance. Duplicate licenses may be issued to any person upon affidavit that the license was lost, and upon payment of a duplicate license fee.]

(d) The fees for commercial marine licenses and duplicate commercial marine licenses shall be established by the department by rules adopted in accordance with chapter 91. The department shall set the fees in an amount that, when combined with the fees provided for in sections 188–37 and 188–50, shall be reasonably necessary to supplement the funding for:

(1) Enforcement of this section and chapter 188; and

(2) The activities set forth in section 187A-11.

[Anyone who qualifies as a "trainee" under rules prescribed by the department shall have the fee waived for a period of not more than one hundred eighty calendar days from the date on which the license is issued.

(c)] (e) The department shall suspend, shall refuse to renew, reinstate, or restore, or shall deny any license issued under this section if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, reinstate, or restore such a license only upon receipt of authorization from the child support enforcement agency, the office of child support hearings, or the family court."

SECTION 2. Section 189–3, Hawaii Revised Statutes, is amended to read as follows:

"**§189-3 Monthly catch report.** (a) [Every] Upon the demand of the department, every commercial marine licensee shall furnish to the department a report or reports with respect to the marine life taken and [any live, fresh, or frozen bait used for each month upon a form prescribed by the department, the form to be known as the "monthly catch report"; provided that whenever the total marine life taken monthly in respect to any commercial marine licensee is insufficient in the judgment of the department to require the submission of a monthly catch report, a certificate of exemption may be issued, and thereafter the exempted commercial marine licensee shall not be required to submit monthly catch reports until the exemption is canceled by the department. Exemptions may be canceled at any time. The monthly catch report shall be submitted to the department not later than the tenth day of the month following the month in which the marine life was taken. Failure or refusal on the part of any commercial marine licensee to submit a monthly catch report as prescribed in this section shall be sufficient cause for the revocation by the department of the commercial marine license. In any proceeding for the revocation of a commercial marine license, the licensee shall be given notice and opportunity for hearing in conformity with chapter 91. Upon revoking the license, the department may specify a period of time during which the commercial marine licensee shall not be eligible to apply for another license; provided that the period shall not exceed one year from the date of revocation.] any other information the department may require for the purposes of this section.

(b) Any information submitted to the department by any person in compliance with any requirement under this section shall be confidential and shall not be disclosed, except when required under court order or pursuant to subpoena issued by the [state attorney general's office,] department of the attorney general, or with the prior written consent of the person submitting the information, or under cooperative agreements with government agencies of the United States for exchange and use of the information specifically to manage marine life. The department, by rule, may establish procedures necessary to preserve the confidentiality, except that the department may release or make public any of the information in the aggregate or summary form which does not directly or indirectly disclose the identity of any person who submits information.

[This subsection shall not be construed to include the wet weight harvest of Corallium secundum, Corallium regale, Corallium laauense, Geradia, Callogorgia gilberti, Narella, Calyptrophora, Lepidisis olapa, and Acanella. The wet weight harvest for each of the above shall be reported to the public by the department.]"

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 6, 1999.)

ACT 10 H.B. NO. 1207

A Bill for an Act Relating to the Cigarette Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 245-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The taxes, however, are subject to the following limitations:

(1) The measure of the taxes shall not include any cigarettes or tobacco products exempted, and so long as the same are exempted, from the imposition of taxes by the Constitution or laws of the United States; [and]

(2) The measure of taxes shall exempt and exclude all sales of cigarettes and tobacco products to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under this chapter), sold by any person licensed under this chapter; and

[(2)] (3) The taxes shall be paid only once in respect of the same cigarettes or tobacco product. This limitation shall not prohibit the imposition of the excise tax on receipts from sales of tobacco products under subsection (a)(2); provided that the amount subject to the tax on each sale shall not include amounts previously taxed under this chapter."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect retroactively and shall apply to taxable periods beginning after June 30, 1993.

(Approved April 6, 1999.)

ACT 11 S.B. NO. 922

A Bill for an Act Relating to Unauthorized Control of Propelled Vehicle.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 708-836, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally or knowingly exerts unauthorized control over

another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 12, 1999.)

ACT 12

S.B. NO. 1122

A Bill for an Act Relating to Firearms.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 134-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Any person violating subsection (a) or (b) shall be guilty of a class A felony. Any person violating this section by carrying or possessing a loaded firearm or by carrying or possessing a loaded or unloaded pistol or revolver without a license issued as provided in section 134-9 shall be guilty of a class B felony. Any person violating this section by carrying or possessing an unloaded firearm, other than a pistol or revolver, shall be guilty of a class C felony.

A conviction and sentence under subsection (a) or (b) shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under subsection (a) or (b) may run concurrently or consecutively with the sentence for the separate felony."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 13, 1999.)

ACT 13

H.B. NO. 622

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 23-51, Hawaii Revised Statutes, requires the auditor to conduct an impact assessment report before considering any legislative measure that "mandates health insurance coverage for specific health services" or "diseases" as

part of individual or group health insurance policies. The legislature finds that under this Act this assessment is not necessary because no new health service is being mandated, and no new disease is being covered. Rather, only the frequency of existing coverage for mammogram screening for women aged forty and over is being increased from once every two years to once every year.

SECTION 2. Section 431:10A-116, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10A-116 Coverage for specific services.** Every person insured under a policy of accident and sickness insurance delivered or issued for delivery in this State shall be entitled to the reimbursements and coverages specified below:

(1) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides for reimbursement for any visual or optometric service, which is within the lawful scope of practice of a duly licensed optometrist, the person entitled to benefits or the person performing the services shall be entitled to reimbursement whether the service is performed by a licensed physician or by a licensed optometrist. Visual or optometric services shall include eye or visual examination, or both, or a correction of any visual or muscular anomaly, and the supplying of opthalmic materials, lenses, contact lenses, spectacles, eyeglasses, and appurtenances thereto[.];

(2) Notwithstanding any provision to the contrary, for all policies, contracts, plans, or agreements issued on or after May 30, 1974, whenever provision is made for reimbursement or indemnity for any service related to surgical or emergency procedures, which is within the lawful scope of practice of any practitioner licensed to practice medicine in this State, reimbursement or indemnification under such policy, contract, plan, or agreement shall not be denied when such services are performed by a dentist acting within the lawful scope of the dentist's license[.];

(3) Notwithstanding any provision to the contrary, whenever the policy provides reimbursement or payment for any service, which is within the lawful scope of practice of a psychologist licensed in this State, the person entitled to benefits or performing the service shall be entitled to reimbursement or payment, whether the service is performed by a licensed physician or licensed psychologist[.];

(4) Notwithstanding any provision to the contrary, each policy, contract, plan, or agreement issued on or after February 1, 1991, except for policies [which] that only provide coverage for specified diseases or other limited benefit coverage, but including policies issued by companies subject to chapter 431, article 10A, part II and chapter 432, article 1 shall provide coverage for screening by low-dose mammography for occult breast cancer as follows:

[(A) For women thirty-five to thirty-nine years of age, one baseline mammogram;

(B)] (A) For women forty [to forty-nine years of age, a mammogram every two years;

(C) For women fifty] years of age and older, an annual mammogram; and

[(D)] (B) For a woman of any age with a history of breast cancer or whose mother or sister has had a history of breast cancer, a mammogram upon the recommendation of the woman's physician.

The services provided in this paragraph are subject to any coinsurance provisions [which] that may be in force in these policies, contracts, plans, or agreements. [The commissioner shall annually review the age and frequency guidelines for mammographic screening recommended by the American Cancer Society, and shall accordingly adjust the age and frequency requirements under subparagraphs (A) to (C) by rule, if necessary.]

For the purpose of this paragraph, the term ''low-dose mammography'' means the x-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with two views for each breast. An insurer may provide the services required by this paragraph through contracts with providers; provided that the contract is determined to be a cost-effective means of delivering the services without sacrifice of quality and meets the approval of the director of health[.];

(5) (A) (i) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides coverage for the children of the insured, that coverage shall also extend to the date of birth of any newborn child to be adopted by the insured; provided that the insured gives written notice to the insurer of the insured's intent to adopt the child prior to the child's date of birth or within thirty days after the child's birth or within the time period required for enrollment of a natural born child under the policy, contract plan, or agreement of the insured, whichever period is longer; provided[, however,] further that if the adoption proceedings are not successful, the insured shall reimburse the insurer for any expenses paid for the child[.]; and

(ii) Where notification has not been received by the insurer prior to the child's birth or within the specified period following the child's birth, insurance coverage shall be effective from the first day following the insurer's receipt of legal notification of the insured's ability to consent for treatment of the infant for whom coverage is sought[.];

and

(B) When the insured is a member of a health maintenance organization (HMO), coverage of an adopted newborn is effective:

(i) From the date of birth of the adopted newborn when the newborn is treated from birth pursuant to a provider contract with the health maintenance organization, and written notice of enrollment in accord with the health maintenance organization's usual enrollment process is provided within thirty days of the date the insured notifies the health maintenance organization of the insured's intent to adopt the infant for whom coverage is sought; or

(ii) From the first day following receipt by the health maintenance organization of written notice of the insured's ability to consent for treatment of the infant for whom coverage is sought and enrollment of the adopted newborn in accord with the health maintenance organization's usual enrollment process if the newborn has been treated from birth by a

provider not contracting or affiliated with the health maintenance organization.''

SECTION 3. Section 432:1-605, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

''(a) Notwithstanding any provision to the contrary, each policy, contract, plan, or agreement issued on or after February 1, 1991, except for policies [which] that only provide coverage for specified diseases or other limited benefit coverage, but including policies issued by companies subject to chapter 431, article 10A, part II and chapter 432, article 1 shall provide coverage for screening by low-dose mammography for occult breast cancer as follows:

[(1) For women thirty-five to thirty-nine years of age, one baseline mammogram;

(2)] (1) For women forty [to forty-nine years of age, a mammogram every two years;

(3) For women fifty] years of age and older, an annual mammogram; and

[(4)] (2) For a woman of any age with a history of breast cancer or whose mother or sister has had a history of breast cancer, a mammogram upon the recommendation of the woman's physician.

(b) The services provided in subsection (a) are subject to any coinsurance provisions [which] that may be in force in these policies, contracts, plans, or agreements. [The commissioner shall annually review the age and frequency guidelines for mammogram screening recommended by the American Cancer Society, and shall accordingly adjust the age and frequency requirements under subsections (a)(1) to (3) by rule, if necessary.]''

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 15, 1999.)

ACT 14

H.B. NO. 849

A Bill for an Act Relating to Special Facility Revenue Bonds for Airports.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 261-51, Hawaii Revised Statutes, is amended by amending the definition of ''special facility'' to read as follows:

'''''Special facility'' means one or more buildings, structures or facilities and the land thereof for the servicing of aircraft, for aeronautics, for air cargo operations, for airports or for the comfort, accommodation and convenience of air travelers and airline employees which is the subject of a special facility lease.''

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 1999.)

ACT 15 H.B. NO. 992

A Bill for an Act Relating to the Issuance of Certificates of Identification.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to:

(1) Remove the requirement of displaying specific mandatory fields on the certificate of identification (more commonly known as the state identification card), such as the social security number, issue date, attorney general's signature, and registrar's signature, thereby leaving the design of the card to the discretion of the attorney general and allowing the possible use of an identification number other than the social security number; and

(2) Change the designated fingerprints to be obtained and retained by the attorney general.

SECTION 2. Section 846-28, Hawaii Revised Statutes, is amended to read as follows:

"**§846-28 Information to be secured.** The department of the attorney general shall require, collect, secure, make, and maintain a record of the following items of information so far as it is practicable to secure the same, with respect to each applicant for registration:

(1) The name of the person applying to be registered (hereinafter called the "registrant" or "applicant"), the street and number or address of the applicant's place of permanent residence, and the applicant's residence and business telephone numbers, if any;

(2) The applicant's occupation and any pertinent data relating thereto;

(3) The applicant's [nationality or] racial extraction;

(4) The applicant's citizenship;

(5) The date and place of the applicant's birth;

(6) The applicant's personal description including sex, height, weight, hair, eyes, complexion, build, scars, and marks;

(7) The applicant's right [thumbprint] and left index fingerprints or, if the applicant has no right [thumb,] index finger or left index finger, other identifying imprint as specified by rules of the department; provided that this requirement shall not apply to minors until they reach the age of three years;

(8) The name, relationship, and address of the nearest relative or other person to be notified in case of sickness, accident, death, emergency, or need of the applicant, if such notification is desired; and

(9) The social security number of the applicant."

SECTION 3. Section 846-30, Hawaii Revised Statutes, is amended to read as follows:

"**§846-30 Identification certificates; form.** The department of the attorney general, after taking the [thumbprint] fingerprints of each registrant as provided in this part (except as otherwise provided in the case of children under three years of age), and after securing the information required by or pursuant to this part, shall issue to each registrant a certificate of identification in such form, and with such information, as the attorney general deems necessary and practicable[, the certificate to contain, among other things: the registrant's social security number; the date of issue; the legal name, residence, citizenship, date of birth, the registrant's signature,

a facsimile signature of the attorney general, a facsimile signature of the officer or employee issuing the certificate (to be designated as the "administrator of the data center"), the name and address of the person to be notified in case of need, and such other personal identification data as the attorney general deems necessary and practicable]."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 15, 1999.)

ACT 16 H.B. NO. 1034

A Bill for an Act Relating to Motor Carriers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 271-16, Hawaii Revised Statutes, is amended to read as follows:

"**§271-16 Temporary authority.** [(a)] To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting the need, the public utilities commission may, in its discretion and without hearings or other proceedings, grant temporary authority for service by a common carrier or a contract carrier by motor vehicle, as the case may be. The temporary authority, unless suspended or revoked for good cause, shall be valid for the time that the commission shall specify, but for no more than a period of one-hundred-twenty days for any one immediate and urgent need. If an application for a certificate of public convenience and necessity or a permit seeking corresponding permanent authority is filed in accordance with applicable laws, regulations, and instructions not later than thirty days after the issuance date of temporary authority, then the commission shall determine at a public hearing held not later than one-hundred-twenty days after the issuance date of temporary authority upon its own motion, or upon motion or upon request by any interested party, whether any temporary operating authority granted under this section shall be continued in force beyond the expiration date specified therein, and until the determination of the application filed by the holder of the temporary operating authority for a certificate of public convenience and necessity or a permit to engage in operations authorized by the temporary operating authority.

[(b) Every application for temporary authority shall be made in writing to the commission and verified under oath. The application shall:

(1) Be accompanied by proof of service upon every current holder of a certificate of public convenience and necessity in the classification for which temporary authority is applied; and
(2) Contain information that the commission shall by rule require.]"

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 1999.)

ACT 17 H.B. NO. 1114

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, As Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 208 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"**§208. Conditions of leases.** Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

(1) The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.

(2) The lessee shall pay a rental of $1 a year for the tract and the lease shall be for a term of ninety-nine years; except that the department may extend the term of any lease, provided that the approval of any extension shall be subject to the condition that the aggregate of the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.

(3) The lessee may be required to occupy and commence to use or cultivate the tract as the [person's] lessee's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.

(4) The lessee [shall] thereafter, for at least such part of each year as the department shall prescribe by rules, [so] shall occupy and use or cultivate the tract on the [person's] lessee's own behalf.

(5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the [person's] lessee's interest in the tract[.]; except that the lessee, with the approval of the department, also may transfer the lessee's interest in the tract to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians or qualified relative who is at least one-quarter Hawaiian approved of by the department[,] or for any indebtedness due the department or for taxes[,] or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the [person's] lessee's interest in the tract or improvements thereon; provided that a lessee may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians, lodging either within the lessee's existing home or in a separate residential dwelling unit constructed on the premises.

(6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

(7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.

(8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease."

SECTION 2. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstance, is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 15, 1999.)

ACT 18 H.B. NO. 1430

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 53-7, Hawaii Revised Statutes, is amended to read as follows:

"**§53-7 Urban renewal projects in disaster areas.** Notwithstanding any other provisions of this chapter, where the council of a county certifies that an area within the county is in need of renewal, redevelopment, or rehabilitation as a result of a seismic wave, flood, fire, hurricane, earthquake, storm, volcanic activity, explosion, or other catastrophe, natural or of human origin (herein called "disaster area") respecting which the governor of the State has certified the need for disaster assistance under Public Law 875, Eighty-first Congress (64 Stat. 1109), or other federal law, the council of a county may approve an urban renewal plan and an urban renewal project with respect to the area without regard to:

(1) The provisions of this chapter as follows: [paragraphs (10) and (16) of] the definitions of "redevelopment area" and "urban area" in section 53-1; the proviso of the first sentence of paragraph (4) of section 53-5; the requirements for housing of displaced families, approval of the plan by planning commission, public hearings and findings required by the county council prior to the approval of the plan as contained in section 53-6, provided that the limitation of time in which to contest validity of the proceedings or of the renewal plan provided in section 53-6 in the case of an urban renewal project for disaster areas shall be twenty days instead of thirty days; the exceptions set forth in the second sentence of section 53-20; the proviso of the second sentence of section 53-21; and

(2) Any of the provisions of this chapter requiring public hearings or requiring that the urban renewal plan conform to the master plan for the development of the county or locality as a whole, or that the urban renewal area be a slum area, or a blighted, deteriorated, or deteriorating area, or that the urban renewal area be predominantly residential in character or be developed or redeveloped for residential use.

In the preparation, planning, financing, acquisition, and disposal of real property, and the execution generally of an urban renewal project for disaster areas, a redevelopment agency shall have all of the rights, powers, privileges, and immunities conferred upon the agency by this chapter including any amendment thereof or addition thereto, or by any other law, in the same manner as though all provisions of law relating to urban renewal projects were applicable to the redevelopment and renewal of the disaster areas as in this section provided, subject to the exceptions hereinabove set forth."

SECTION 2. Section 53-53, Hawaii Revised Statutes, is amended to read as follows:

"**§53-53 Powers with respect to urban renewal.** A redevelopment agency shall have all the powers necessary or convenient to undertake and carry out all urban renewal plans and urban renewal projects, including the authority to acquire and dispose of property, to issue bonds and other obligations, to borrow and accept

grants from the federal government or any other source, and to exercise the other powers which this chapter confers on an agency with respect to redevelopment projects. For the purposes of this part in connection with the planning and undertaking of any urban renewal plan or urban renewal project, the agency, the county, and all public and private officers, agencies, and bodies shall have all the rights, powers, privileges, and immunities which they have with respect to a redevelopment plan or redevelopment project, in the same manner as though all of the provisions of part I of this chapter applicable to a redevelopment plan or redevelopment project were therein expressly made applicable to an urban renewal plan or urban renewal project; and for such purposes as used in part I and in this part elsewhere than in this section, except where the context clearly indicates such meaning to be inappropriate or as otherwise expressly provided in this section:

(1) The word "redevelopment" (elsewhere than in [[paragraph] (13) of] section 53-1) means "urban renewal";

(2) The word "slum" and the word "blighted" (elsewhere than in [[paragraph] (3) of] section 53-1) mean "blighted, deteriorated, or deteriorating";

provided (A) that nothing in this part shall be deemed to change the meaning of the terms "local redevelopment agency" or "agency," or the corporate name of any local redevelopment agency; and (B) that the finding by the council that the project area is a blighted area prescribed by section 53-6 shall not be required.

In addition to the surveys and plans which an agency otherwise may make, an agency may make (1) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, and (2) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The agency may develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and other urban blight."

SECTION 3. Section 76-28, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"§76-28 [Notices] <u>Forms</u> required of appointing authorities."

SECTION 4. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Violation of this section shall be considered an offense as defined under section 701-107(5) and shall subject the violator to the following penalties:

(1) For a first conviction, the person shall:
   (A) Be fined not more than $100;
   (B) Be required by the court to attend a child passenger restraint system safety class conducted by the division of driver education; provided that:
      (i) The class may include video conferences as determined by the administrator of the division of driver education as an alternative method of education; and
      (ii) The class shall not exceed four hours; and
   (C) Pay a $50 driver education assessment as provided in section 286G-3;

(2) For a conviction of a second offense, the person shall:
   (A) Be fined not more than $200;

(B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class; and

(C) Pay a $50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger [[]restraint[]] system safety class conducted by the division of driver education; and

(3) For a conviction of a third or subsequent offense, the person shall:

(A) Be fined not more than $500;

(B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class; and

(C) Pay a $50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger [[]restraint[]] system safety class conducted by the division of driver education."

SECTION 5. Section 291C-133, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"**[[]§291C-133 Waste material falling from motor vehicles.[]]**"

SECTION 6. Section 323D-82, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§323D-82[]] Maintenance of services.** A person who has acquired or is engaged in the acquisition of a hospital shall not substantially reduce [[]or[]] eliminate direct patient care services at the hospital below the levels at which those services were available at the time of the acquisition, without first giving written notice of the planned reduction or elimination to the agency and receiving the agency's approval, prior to implementing the reduction or elimination of services."

SECTION 7. Section 342P-28, Hawaii Revised Statutes, is amended to read as follows:

"**§342P-28 Fees.** The director may establish reasonable fees for the issuance of notifications, certificates, licenses, permits, and variances to cover the cost of issuance thereof, and for the implementation and enforcement of the terms and conditions of permits and variances not including court costs or other costs associated with any formal enforcement action. The fees shall be deposited to the credit of the asbestos and lead abatement special fund [[]or[]] noise, radiation, and indoor air quality special fund."

SECTION 8. Section 351-62.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The court shall impose a compensation fee upon every convicted defendant who is or will be able to pay the compensation fee. The amount of the compensation fee shall be commensurate with the seriousness of the offense as follows:

(1) Not less than $100 nor more than $500 for conviction of a felony;

(2) $50 for conviction of a misdemeanor; and

(3) $25 for conviction of a petty misdemeanor.

The compensation fee shall be separate from any fine that may be imposed under section 706-640 and shall be in addition to any other disposition under this chapter; provided that the court shall waive the imposition of a compensation fee if the defendant is unable to pay the compensation fee. Moneys from the compensation fees shall be deposited into the [ ]crime victim compensation special fund[ ] under section 351-62.5."

SECTION 9. Section 351-64.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The person liable shall, in the discretion of the commission, either repay any amount to the crime victim compensation [ ]special fund[ ] or have such amount deducted from any future compensation payable to the person under this chapter."

SECTION 10. Section 351-70, Hawaii Revised Statutes, is amended to read as follows:

"**§351-70 Annual report.** The commission shall transmit annually to the governor and to the director of public safety, at least thirty days prior to the convening of the legislature a report of its activities under this chapter including a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the names of attorneys and health care providers where they are the applicants. The director of public safety shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount of compensation awarded during the prior fiscal year and an estimate of the amount that is reasonably estimated to be required for the next fiscal year, and a legislative bill to appropriate funds for the crime victim compensation [ ]special fund[ ] for the next fiscal year. The commission shall provide upon request of the governor, the director of public safety, or the legislature, the relevant data, including the names of all applicants for compensation, under this chapter."

SECTION 11. Section 351-84, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Moneys deposited into the special account shall be used first as provided in section 351-83, if necessary, and then to reimburse the crime victim compensation [ ]special fund[ ] for payments made pursuant to this chapter for the crime committed by the convicted person."

SECTION 12. Section 354D-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Proceeds and wages owed to a qualified, able-bodied inmate from the sale of goods or services that were produced by the qualified, able-bodied inmate under a program authorized by this chapter shall be held in an account maintained by the department and paid:

(1) To the crime victim compensation [ ]special fund[ ] on a quarterly basis in amounts representing not less than five per cent nor more than twenty per cent of the earnings of all inmates in the State incarcerated for a violent crime listed in section 351-32; provided that these payments shall be mandatory and shall in no way relate to any claim filed under chapter 351; and provided further that the director shall submit

timely annual reports to the legislature and the crime victim compensation commission on the amounts paid pursuant to this paragraph during the previous fiscal year;

(2) To support the qualified, able-bodied inmate's dependents in amounts deemed appropriate by the department after consultation with the department of human services;

(3) Into trust funds that may be established for the qualified, able-bodied inmate and shall be payable upon the inmate's release; and

(4) Into the correctional industries revolving fund, for costs incident to the qualified, able-bodied inmate's confinement in an amount determined by the department, but not to exceed twenty per cent of the proceeds and wages."

SECTION 13. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The company is exempt from participation, and shall not join, contribute financially to, nor be entitled to the protection of, any plan, association, guaranty, insolvency fund, [[]or education[]] and training fund authorized or required by this chapter. Notwithstanding the foregoing exemptions, beginning January 1, 2008, the company shall participate in the property and liability insurance guaranty association, pursuant to sections 431:16-101 to 431:16-117; provided that the company shall meet the surplus requirements applicable to all other domestic insurers under chapter 431 effective January 1, 2008."

SECTION 14. Section 468M-17, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"[[]§468M-17[]] Rules [and regulations]."

SECTION 15. Section 485-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This section shall not apply to any dealer that is registered under the Securities Exchange Act of 1934 or to an investment adviser that maintains its principal place [[]of business[]] in a state other than this State; provided the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's recordkeeping requirements, if any. The commissioner may require:

(1) The filing of any financial or operational report that is required to be filed under the Securities Exchange Act of 1934 or under the laws of the state where an investment adviser maintains its principal place of business; and

(2) The production of any document, in accordance with the procedures set forth in subsection (a), required to be maintained by a dealer registered under the Securities Exchange Act of 1934 or by the state in which an investment adviser maintains its principal place of business."

SECTION 16. Section 571-84, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection and use only by persons

whose official duties are concerned with this chapter, except as provided in subsections (d)[, (f), and (j)] and (f) or as otherwise ordered by the court."

SECTION 17. Section 706-646, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) The court may order the defendant to make restitution for losses suffered by the victim or victims as a result of the defendant's offense. The court may order restitution to be paid to the [[]crime victim compensation commission[]] in the event that the victim has been given an award for compensation under chapter 351."

SECTION 18. Section 709-906, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"§709-906 Abuse of family [and] or household members; penalty."

SECTION 19. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

"§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

(a) All offenses which specifically authorize forfeiture;

(b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, [[]trademark counterfeiting,[]] insurance fraud, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;

(c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

(d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture."

SECTION 20. Act 240, Session Laws of Hawaii 1991, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval[, and shall be repealed on June 30, 1993]."

SECTION 21. Act 53, Session Laws of Hawaii 1998, is amended by amending the prefatory language in section 1 to read as follows:

"SECTION 1. Section [76-28,] 76-56, Hawaii Revised Statutes, is amended to read as follows:"

SECTION 22. Act 78, Session Laws of Hawaii 1998, is amended by amending the prefatory language in section 3 to read as follows:

"SECTION 3. Act 202, Session Laws of Hawaii [1998,] 1988, as amended by Act 111, Session Laws of Hawaii 1994, is amended by amending section 3 to read as follows:"

SECTION 23. Act 176, Session Laws of Hawaii 1998, is amended by amending the prefatory language in section 6 to read as follows:

"SECTION 6. [Chapter] Section 171-2, Hawaii Revised Statutes, is amended to read as follows:"

SECTION 24. Act 219, Session Laws of Hawaii 1998, is amended by amending section 6 to read as follows:

"SECTION 6. Section 501-20, Hawaii Revised Statutes, is amended by adding five new [definition] definitions to be appropriately inserted and to read as follows:

"**[§501-20 Definitions.** As used in this chapter, unless the context otherwise requires:]

"Apartment lease" means an apartment lease, a condominium conveyance document, an apartment deed and ground lease, or other instrument which has been registered pursuant to section 501-121 and which leases or subleases a condominium apartment or its appurtenant undivided interest in the land of a condominium project established or existing under the condominium property act or at common law.

"Leasehold time share interest" means a time share interest consisting of an undivided interest in an apartment lease.

"Notice of time share plan" means a notice of time share plan as that term is defined in chapter 514E.

"Time share interest" means a time share interest as that term is defined in chapter 514E.

"Time share plan" means a time share plan as that term is defined in chapter 514E."""

SECTION 25. Act 229, Session Laws of Hawaii 1998, is amended by amending the prefatory language in section 1 to read as follows:

"SECTION 1. Chapter 323F, Hawaii Revised Statutes, is amended by adding [three] two new sections to be appropriately designated and to read as follows:"

SECTION 26. Act 242, Session Laws of Hawaii 1998, is amended by amending the prefatory language in section 7 to read as follows:

"SECTION 7. Section 342P-5, Hawaii Revised Statutes, is amended by amending the title and subsections (a) and (b) to read as follows:"

SECTION 27. Act 311, Session Laws of Hawaii 1998, is amended by amending the prefatory language in section 15 to read as follows:

"SECTION 15. Section 321-27, Hawaii Revised Statutes, is amended [by amending its title and subsections (a) and (b)] to read as follows:"

SECTION 28. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1999, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 29. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 30. This Act shall take effect upon its approval; provided that:

1. Section 20, amending section 4 of Act 240, Session Laws of Hawaii 1991, shall not affect the amendments made by section 1 of Act 240, Session Laws of Hawaii 1991;
2. Section 21 shall take effect retroactive to April 29, 1998;
3. Section 22 shall take effect retroactive to May 19, 1998;
4. Section 23 shall take effect retroactive to July 1, 1998;
5. Section 24 shall take effect on July 1, 1999;
6. Section 25 shall take effect retroactive to June 1, 1998;
7. Section 26 shall take effect retroactive to July 20, 1998; and
8. Section 27 shall take effect retroactive to July 1, 1998.

(Approved April 15, 1999.)

ACT 19 H.B. NO. 1444

A Bill for an Act Relating to the Disposition of Notary Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 456-16, Hawaii Revised Statutes, is amended to read as follows:

"**§456-16 Disposition of records, penalty.** The records of each notary public shall be deposited with the [clerk of the circuit court of the judicial circuit in which the notary public resides] office of the attorney general upon the resignation, death, expiration of each term of office, or removal from or abandonment of office. If any notary fails to comply with this section within ninety days of the date of the resignation, expiration of any term of office, or removal from or abandonment of office or if the notary's personal representative fails to comply with this section within ninety days of the notary's death, then the notary or the notary's personal representative shall forfeit to the State not less than $50 nor more than $500, in the discretion of the court, in an action brought by the attorney general on behalf of the State."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved April 15, 1999.)

ACT 20

H.B. NO. 1485

A Bill for an Act Relating to District Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 604-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The district court shall have concurrent jurisdiction with the family court of any violation of an order issued pursuant to chapter 586 or any violation of section 709-906 when multiple offenses are charged [through complaint or indictment] and at least one other offense is a criminal offense within the jurisdiction of the district courts."

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 1999.)

ACT 21

S.B. NO. 1478

A Bill for an Act Relating to Plants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 150A-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board shall maintain a list of restricted plants and a list of prohibited plants. Restricted plants shall not be imported into the State without a permit issued pursuant to rules, and any violation of the conditions listed on the permit shall be a violation of this section.

The department of agriculture shall designate specific plants that may spread or may be likely to spread an infestation or infection of an insect, pest, or disease that is detrimental or potentially harmful to agriculture, horticulture, animal or public health, or natural resources including native biota, or may have an adverse effect on the environment as determined by the board. These plants are to be designated by rule as restricted plants. In addition, plant species designated by rule as noxious weeds are designated as restricted plants."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1999.)

ACT 22

H.B. NO. 102

A Bill for an Act Relating to Wage Payments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 388-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Civil. Any employer who fails to pay wages in accordance with this chapter without equitable justification shall be liable to the employee, in addition to the wages legally proven to be due, for a sum [up] equal to the amount of unpaid wages and interest at a rate of six per cent per year from the date that the wages were due."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1999.)

ACT 23

H.B. NO. 1492

A Bill for an Act Relating to Offenses Against Public Administration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 710-1023, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) "Contraband" means any article or thing [which], other than a dangerous instrument or drug as defined in section 710-1022(2), that a person confined in a correctional or detention facility is prohibited from obtaining or possessing by statute, rule, [regulation,] or order."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1999.)

ACT 24

H.B. NO. 1026

A Bill for an Act Relating to Insurance Premium Taxes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 7 to be appropriately designated and to read as follows:

"**§431:7- Low-income housing, insurance premium tax credit.** The low-income housing tax credit provided under section 235-110.8 shall be operative for this chapter and may be claimed against the tax imposed under section 431:7-202."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 1998.

(Approved April 23, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 25 H.B. NO. 1042

A Bill for an Act Relating to the Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87-22, Hawaii Revised Statutes, is amended to read as follows:

"**§87-22 Determine health benefits plan; contract with carriers.** (a) The board of trustees shall determine the health benefits plan[,] or plans, which shall be excepted from the minimum group requirements of chapter 431. The health benefits plan or plans shall provide, pay for, arrange for, or reimburse the cost of hospitalization, surgery, medical, dental treatment, and care, and may include prescribed drugs, medicines, prosthetic appliances, hospital in-patient and out-patient service benefits, vision treatment and care, medical, and dental [indemnity] benefits.

(b) The board may contract for the following health benefits plans; provided that benefits provided under any respective plan shall be equally available to all employee-beneficiaries and dependent-beneficiaries selecting the plan regardless of age, as provided for below:

(1) [A statewide] An indemnity benefit plan or plans under which a carrier agrees to pay certain sums of money not in excess of the actual expenses incurred for health services[.];

(2) A [statewide] service benefit plan or plans under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services[,] or, under certain conditions, payment is made by a carrier to an employee-beneficiary[.];

(3) Health maintenance organization plans, which provide or arrange health services for members on a prepaid basis, with professional services provided by physicians practicing individually or as a group in a common center or centers[.];

(4) Plans to offer dental benefits through [a statewide] an indemnity plan[,] or plans, a [statewide] service benefit plan[,] or plans, dental maintenance organization plans, or combinations thereof[.];

(5) Plans to offer prescription drug benefits through [a statewide] an indemnity plan[,] or plans, a [statewide] service benefit plan[,] or plans, health maintenance organization plans, or combinations thereof[.];

(6) Plans to offer vision care benefits through [a statewide] an indemnity plan[,] or plans, a [statewide] service benefit plan[,] or plans, health maintenance organization plans, or combinations thereof[.]; or

(7) A noninsured schedule of benefits similar to any of the schedule of benefits set forth in the health benefits plans authorized in paragraphs (1) to (6)."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1999.)

ACT 26 H.B. NO. 1044

A Bill for an Act Relating to Health Benefits for Part-Time, Temporary, and Seasonal or Casual Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 87, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§87- Health benefits for part-time, temporary, and seasonal or casual employees; provision of.** (a) After July 1, 2000, the board of trustees shall offer medical, hospital, and surgical benefits plans to part-time, temporary, and seasonal or casual employees at no cost to the employers. A part-time, temporary, and seasonal or casual employee means a person employed for less than three months or whose employment is less than one-half of a full-time equivalent position. The board of trustees may determine eligibility for part-time, temporary, and seasonal or casual employees by rules adopted pursuant to chapter 91.

(b) The board of trustees shall determine the medical, hospital, and surgical benefits plan, which shall be excepted from the minimum group requirements of article 10A of chapter 431. The medical, hospital, and surgical benefits plan shall provide, pay for, arrange for, or reimburse the cost of hospitalization, surgery, medical, and may include prescribed hospital in-patient and out-patient service and medical benefits.

(c) The board may contract for the following health benefit plans; provided that benefits provided under any respective plan shall be equally available to all part-time, temporary, and seasonal or casual employees regardless of age, as provided for below:

(1) An indemnity benefit plan or plans under which a carrier agrees to pay certain sums of money not in excess of the actual expenses incurred for health services;

(2) A service benefit plan or plans under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services, or, under certain conditions, payment is made by a carrier to a part-time, temporary, and seasonal or casual employee;

(3) Health maintenance organization plans, which provide or arrange health services for members on a prepaid basis, with professional services provided by physicians practicing individually or as a group in a common center or centers; and

(4) A noninsured schedule of benefits similar to any of the schedule of benefits set forth in the health benefits plans authorized in paragraphs (1) to (3).

(d) Each part-time, temporary, and seasonal or casual employee enrolled for health benefits shall pay monthly contributions directly to the board's designated carrier. The monthly contributions may include the carrier's administrative costs."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 27 H.B. NO. 1121

A Bill for an Act Relating to the Sunset Clause in Act 128, Session Laws of Hawaii 1997.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 128, Session Laws of Hawaii 1997, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval[; provided that this Act shall be repealed two years after its effective date]."

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect on June 15, 1999.

(Approved April 23, 1999.)

ACT 28 H.B. NO. 1165

A Bill for an Act Relating to the Occupational Safety and Health Training and Assistance Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 396-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Education and training.

(1) The department may disseminate, through exhibitions, videos, lectures, pamphlets, and any other method of publicity, information to employers, employees, and the general public regarding the causes and prevention of industrial accidents, injuries, and illnesses;

(2) Where appropriate, the department shall undertake programs in training and consultation with employers and employees as a means of en-

couraging voluntary compliance with occupational safety and health standards and rules; and

(3) There is established a special fund to be known as the occupational safety and health training and assistance fund into which shall be deposited: in each fiscal year, up to $500,000 in fines, interest, and penalties collected pursuant to section 396-10; interest earned on any moneys in the fund; and all moneys received for the fund from any source. The moneys in the fund may be used to carry out the purposes of this subsection. The director of finance shall be the custodian of the fund, invest its moneys in accordance with applicable laws and rules, and disburse the moneys in the fund in accordance with instructions from the director of labor and industrial relations and section 36-27. All moneys earned from investments shall be deposited in the fund. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the fund. The fund may be used for:

(A) Occupational safety and health training programs;

(B) Department-sponsored safety and health conferences;

(C) Additional state consultants (occupational safety and health advisors) to assist employers, unions, and employees; [and]

(D) Preparation of annual reports pursuant to section 396-17[.]; and

(E) Certification programs to enhance safety and health.

The director of labor and industrial relations shall submit annual reports to the legislature on the status of the fund, including expenditures and program results, not less than twenty days prior to the convening of each regular session."

SECTION 2. Act 130, Session Laws of Hawaii 1994, as amended by Act 12, Special Session Laws of Hawaii 1995, is amended by amending section 4 to read as follows:

""SECTION 4. This Act shall take effect on July 1, 1994; provided that:

(1) Sections 1 and 2 shall be repealed on July 1, [1999;] 2003;

(2) On July 1, [1999,] 2003, subsection (c) of section 396-4, Hawaii Revised Statutes, is reenacted in the form in which it read on June 30, 1994; and

(3) The director of finance shall transfer to the credit of the state general fund, all unexpended [or] and unencumbered balances remaining in the occupational safety and health training and assistance fund established pursuant to section 396-4, Hawaii Revised Statutes, [prior to] as of the close of business on June 30, [1999.] 2003."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 1999.

(Approved April 23, 1999.)

ACT 29 H.B. NO. 1168

A Bill for an Act Relating to the Library Enhanced Services Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the public library system needs to be responsive to the competitive and fast-changing field of information access, storage, and delivery, and to the needs of its patrons. The legislature also recognizes that the public library system's ability to provide its services is severely compromised by the limited operational funds available, and supports the Hawaii state public library system's efforts to enhance its services through public support via donations of money, services, and properties.

The legislature further finds that the results of the state library system's implementation of its "Customer Satisfaction: A Master Plan for Public Libraries," approved by the Board of Education in April 1991, has been to improve patron services, patron access to information, private funding support, greater revenue from a variety of services, employee morale, and cost controls. From this master plan evolved the project called "State Library Innovations: A Model for Maximizing Employees and Revenues" (SLIMMER). To enable the Hawaii state public library system to collect revenues from a variety of services, the legislature enacted Acts 327, 361, and 328, Session Laws of Hawaii 1993, first, to authorize the library to establish enhanced services and charge fees for use to support library operations; second, to create a charitable trust called Public-Private Partners for Literacy Trust Fund; and third, to establish the Hawaii State Library Foundation Trust Fund. The legislature extended Act 327, Session Laws of Hawaii 1993, to July 1, 1999, with the enactment of Act 144, Session Laws of Hawaii 1996.

The purpose of this Act is to continue the initiatives begun in 1991 so that the services and revenues generated by this legislation will continue to be supported. The legislature encourages the library system to generate such supplemental revenues through its own innovations. The legislature recognizes through these enactments that the Hawaii state public library system requires sources of revenue beyond state tax revenues in order to fully support its service program and to maintain a leading-edge position in provision of library services to the residents of the State of Hawaii.

SECTION 2. Act 327, Session Laws of Hawaii 1993, as amended by Act 144, Session Laws of Hawaii 1996, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall take effect upon its approval and shall be repealed on July 1, [1999.] 2002."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 1999.

(Approved April 23, 1999.)

ACT 30

H.B. NO. 50

A Bill for an Act Relating to Temporary Disability Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 392-25, Hawaii Revised Statutes, is amended to read as follows:

"**[[]392-25[]] Eligibility for benefits.** An individual is eligible to receive temporary disability benefits if the individual has been in employment for at least fourteen weeks during each of which the individual has received remuneration in any form for twenty or more hours and earned wages of at least $400, during the [four completed calendar quarters] fifty-two weeks immediately preceding the first day of disability."

SECTION 2. Section 392-43, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Weekly wages for the purposes of this section shall not include:

(1) [wages] Wages earned by an employee in employment during any payroll period unless, during the [four completed calendar quarters] fifty-two weeks immediately preceding such payroll period, the employee has earned wages of at least $400 and has been in employment for at least fourteen weeks during each of which the employee has received remuneration in any form for twenty or more hours; and

(2) [remuneration] Remuneration in excess of one fifty-second of the average annual wage in the State as determined for the preceding year pursuant to section 383-61(b) multiplied by the factor 1.21, which amount the director shall cause to be published annually prior to the first day of January following the determination."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall apply to all disabilities occurring after December 31, 1999.

(Approved April 23, 1999.)

ACT 31

H.B. NO. 250

A Bill for an Act Relating to the Management of Financing Agreements for the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 37D-2, Hawaii Revised Statutes, is amended to read as follows:

"**§37D-2 Financing agreements.** Only with the approval of the director, and the approval by the attorney general [of] as to form and legality, may the agency enter into a financing agreement in accordance with this chapter[.], except that the

board of regents of the University of Hawaii may enter into a financing agreement in accordance with this chapter without the approval of the director and of the attorney general as to form and legality if the principal amount of the financing agreement does not exceed $3,000,000. A financing agreement may be entered into at the time (before or after commencement or completion of any improvement to be financed) and shall be upon terms the agency finds to be advantageous. Any financing agreement entered into by the agency without the approvals required by this section shall be void and of no effect. Financing agreements shall be subject to the following limitations:

(1) Amounts payable by the agency under a financing agreement shall be limited to available funds. In no circumstance shall the agency be obligated to pay amounts due under a financing agreement from any source other than available funds. If, by reason of insufficient available funds or other reason, amounts due under a financing agreement are not paid when due, the lender may exercise any property right that the agency has granted to it in the financing agreement, against the property that was purchased with the proceeds of the financing agreement, and apply the amounts so received toward payments scheduled to be made by the agency under the financing agreement;

(2) No property rights may be granted in property unless the property is being acquired, is to be substantially improved, is to be refinanced with the proceeds of a financing agreement, or is land on which the property is located;

(3) [The] Except as otherwise provided in this section with respect to the University of Hawaii, the agency shall not enter into financing agreements under any provision of law other than this chapter if the principal amount of the financing agreement, together with the principal amount of any financing agreement previously issued by the agency for the same project, exceeds $100,000; and

(4) [The] Except as otherwise provided in this section with respect to the University of Hawaii, the sale, assignment, or other disposition of any financing agreements, including certificates of participation, shall require the approval of the director."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1999.)

ACT 32 H.B. NO. 979

A Bill for an Act Relating to Agricultural Loans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 155-1, Hawaii Revised Statutes, is amended by amending the definition of "private lender" to read as follows:

"(6) "Private lender" includes banks, savings and loan associations, credit unions, mortgage companies, and other qualified companies whose business includes the making of loans in the State."

SECTION 2. Section 155-3, Hawaii Revised Statutes, is amended to read as follows:

"**§155-3 Restriction.** Loans provided for by this chapter shall be authorized only if these loans cannot be made by two [private] lenders, [a] which may include any of the following:

(1) Private lenders;

(2) Members of the farm credit system [bank, or the]; or

(3) The United States Department of Agriculture[, except];

provided that the board of agriculture may waive this requirement for emergency loans."

SECTION 3. Section 155-6, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

"(e) When a participating loan has been approved by the department, its share [shall] may be paid to the participating private lender for disbursement to the borrower. [The private lender shall collect all payments from the borrower and otherwise service the loan.]

(f) Out of interest collected, the private lender may be paid a service fee to be determined by the department which fee shall not exceed one per cent of the unpaid principal balance of the loan[,]; provided that this fee shall not be added to any amount which the borrower is obligated to pay[.]; and further provided that the private lender services the loan."

SECTION 4. Section 155-9, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Class C: Farm operating loans shall be for the purpose of carrying on and improving a farm[1] operation, including:

(1) The purchase of farm equipment and livestock;

(2) The payment of production and marketing expenses including materials, labor, and services;

(3) The payment of living expenses; and

(4) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed $400,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations.

Qualified farmers affected by state eradication programs may also be eligible for loans under this subsection. Loans made for rehabilitation from eradication programs shall be subject to the terms of class "C" loans; provided that the interest rate shall be three per cent a year and the requirements in section 155-3 shall be waived and paragraph (4) shall not apply."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 23, 1999.)

Note

1. Prior to amendment "farming" appeared here.

ACT 33

H.B. NO. 983

A Bill for an Act Making An Emergency Appropriation for the Agribusiness Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 328, Session Laws of Hawaii 1997, as amended by Act 116, Session Laws of Hawaii 1998, appropriated certain designated sums from the Hawaii agricultural development revolving fund for agribusiness development and research (AGR 161) for the fiscal year 1998-1999.

A critical funding emergency exists. The papaya ringspot virus disease has devastated the papaya industry. A genetically engineered papaya proven to be resistant to the ringspot virus was recently developed and patented. Securing the patent licenses for the transgenic papaya is expected to ensure the economic growth and expansion of the papaya industry in Hawaii. A project authorized by the agribusiness development corporation to assist the papaya industry with the cost of securing the transgenic papaya patent licenses requires the expenditure of additional funds in fiscal year 1998-1999 from the Hawaii agricultural development revolving fund.

The purpose of this Act is to appropriate additional revolving funds in fiscal year 1998-1999 to allow the agribusiness development corporation to reimburse the papaya industry for securing patent licenses needed to commercialize the transgenic papaya and to allow the agribusiness development corporation to carry out its ongoing projects.

SECTION 3. There is appropriated out of the Hawaii agricultural development revolving fund the sum of $50,000, or so much thereof as may be necessary for fiscal year 1998-1999, to reimburse the papaya industry for securing patent licenses needed to commercialize the transgenic papaya and to allow the agribusiness development corporation to carry out its ongoing projects.

SECTION 4. The sums appropriated shall be expended by the agribusiness development corporation for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 23, 1999.)

ACT 34 S.B. NO. 1051

A Bill for an Act Relating to Disclosure of Department of Human Services' Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department [of human services] and its agents shall keep records that may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

(1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, or social services;

(2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any form of public assistance, food stamps, medical assistance, or social services, including disclosure by the department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any aspect of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel [is] shall be permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;

(3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, [the determination is to include] including verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services needed;

(4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;

(5) Federal agencies responsible for the administration of federally assisted programs, that provide assistance[,] in cash or in kind[,] for services[,] directly to individuals on the basis of need; and certification of receipt of assistance to needy families with minor dependents to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;

(6) Employees acting within the scope and course of their employment of recognized social welfare organizations as may be approved by the department;

(7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an adult day care center, including disclosure by the

department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations;

(8) Disclosure to the child support enforcement agency for obtaining or enforcing a child support order under chapter 576D;

(9) Purposes directly connected to and necessary for the career planning, job training, education, job placement, or employment of participants in the workfare program under part IX; [and]

(10) Disclosure of a recipient's residence and business address to law enforcement officers who request information if the information is needed for an official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator, and in cases where the information is needed for an official purpose and where the department has informed the recipient of the circumstances in which the recipient's address may be released under section 92F-19(a)(1), (3), or (4)[.]; and

(11) Disclosure of reports and records relating to child abuse or neglect to the extent allowed by rules adopted under section 350-1.4."

SECTION 2. Section 350-1.4, Hawaii Revised Statutes, is amended to read as follows:

"[[]§350-1.4[]] **Confidentiality.** (a) All reports to the department concerning child abuse or neglect made pursuant to this chapter, as well as all records of such reports, are confidential. The director may adopt rules, pursuant to chapter 91, to provide for the confidentiality of reports and records and for the authorized disclosure of reports and records. Any person who intentionally makes an unauthorized disclosure of a report or record of a report made to the department shall be guilty of a misdemeanor.

(b) Every reasonable good faith effort shall be made by the department to maintain the confidentiality of the name of a reporter who requests that the reporter's name be confidential.

(c) Notwithstanding subsection (a) and section 346-10, the director may adopt rules pursuant to chapter 91 to provide for the release of information required by federal statute or regulation."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved 23, 1999.)

ACT 35 S.B. NO. 1080

A Bill for an Act Relating to Planning and Community Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 86, Session Laws of Hawaii 1990, is amended by repealing section 18.

["SECTION 18. Section 5 of this Act shall automatically be repealed on June 30, 2000, provided that after June 30, 1995, the Legislature may repeal Section 5 upon adoption of a concurrent resolution."]

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1999.)

ACT 36

S.B. NO. 1460

A Bill for an Act Relating to Certified Substance Abuse Staff.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definition of "certified substance abuse staff" to read as follows:

""Certified substance abuse staff" means professionals and paraprofessionals with current full certification as substance abuse counselors or program administrators under chapter 321, [and] physicians who hold a current American Society of Addiction Medicine certificate[.], and psychologists who hold a current certification from the American Psychological Association College of Professional Psychology in the treatment of alcohol and other psychoactive substance use disorders."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1999.)

ACT 37

S.B. NO. 484

A Bill for an Act Relating to Personal Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the exemption from attachment and execution allowed for a debtor's motor vehicle is set by statute at $1,000. Typically, this means that a debtor facing attachment and execution because of bankruptcy may keep his or her motor vehicle if the vehicle is valued at $1,000 or less. Since the average price of a vehicle is more than $1,000, a debtor's car is usually auctioned to pay-off creditors except for the exempted $1,000. Ironically, the debtor is left without transportation at the very time when the use of a vehicle for employment purposes is of critical importance. The purpose of this Act is to rectify this problem by increasing the exemption from attachment and execution for motor vehicles from $1,000 to $2,575. The proposed amount would also match the exemption provided by federal law.

SECTION 2. Section 651-121, Hawaii Revised Statutes, is amended to read as follows:

"**§651-121 Certain personal property and insurance thereon, exempt.** The following described personal property of an individual up to the value set forth shall be exempt from attachment and execution as follows:

(1) All necessary household furnishings and appliances, books and wearing apparel, ordinarily and reasonably necessary to, and personally used by a debtor or the debtor's family residing with the debtor; and, in addition thereto, jewelry, watches, and items of personal adornment up to an aggregate cash value not exceeding $1,000.

(2) One motor vehicle up to a value of [$1,000] $2,575 over and above all liens and encumbrances on the motor vehicle; provided that the value of the motor vehicle shall be measured by established wholesale used car prices customarily found in guides used by Hawaii motor vehicle dealers; or, if not listed in such guides, fair wholesale market value, with necessary adjustment for condition.

(3) Any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and nets, one motor vehicle, and other personal property ordinarily and reasonably necessary to and personally owned and used by the debtor in the exercise of the debtor's trade, business, calling, or profession by which the debtor earns the debtor's livelihood.

(4) One parcel of land, not exceeding two hundred fifty square feet in size, niche or interment space owned, used, or occupied by any person, or by any person jointly with any other person or persons, in any graveyard, cemetery, or other place for the sole purpose of burying the dead, together with the railing or fencing enclosing the same, and all gravestones, tombstones, monuments, and other appropriate improvements thereon erected.

(5) The proceeds of insurance on, and the proceeds of the sale of, the property in this section mentioned, for the period of six months from the date the proceeds are received.

(6) The wages, salaries, commissions, and all other compensation for personal services due to the debtor for services rendered during the thirty-one days before the date of the proceeding."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 38 S.B. NO. 716

A Bill for an Act Relating to the Natural Energy Laboratory.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 227D-1, Hawaii Revised Statutes, is amended by amending the definition of "research and technology park" to read as follows:

""Research and technology park" means a tract of real property determined by the board as being suitable for use as building sites for projects engaged in research, development, demonstration, processing, or manufacturing activities or retail or commercial enterprises utilizing or in support of the utilization of natural resources or geothermal energy. This includes, but is not limited to, research, commercialization, training, education, technical analyses, pilot plant, or prototype product development, and may include the installation of improvements to tracts incidental to the use of real property as a research and technology park, such as water, sewer, sewage and waste disposal, and drainage facilities, sufficient to adequately service projects in the research and technology park, and provision of incidental transportation facilities, power distribution facilities, and communication facilities. [Research and technology parks shall not include any buildings or structures of any kind except for buildings or structures incidental to improvements of the research and technology park.]"

SECTION 2. Section 227D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established the natural energy laboratory of Hawaii authority, which shall be a body corporate and politic and an instrumentality and agency of the State. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the natural energy laboratory of Hawaii authority shall be to facilitate research, development, and commercialization of natural energy resources and ocean-related research, technology, and industry in Hawaii and to engage in [one] retail [concession activity and one tour-related activity], commercial, or tourism activities that will financially support that research, development, and commercialization at a research and technology park in Hawaii. Its duties shall include:

(1) Establishing, managing, and operating facilities that provide sites for:
   (A) Research and development;
   (B) Commercial projects and businesses utilizing natural resources, such as ocean water or geothermal energy;
   (C) [Those] Compatible businesses engaged in [other compatible] scientific and technological investigations[;], or retail, commercial, and tourism activities; and
   (D) Businesses or educational facilities that support the primary projects and activities;
(2) Providing support, utilities, and other services to facility tenants and government agencies;
(3) Maintaining the physical structure of the facilities;
(4) Promoting and marketing these facilities;
(5) Promoting and marketing the reasonable utilization of available natural resources;
(6) Supporting ocean research and technology development projects that support national and state interests, use facilities and infrastructure in Hawaii, and foster potential commercial development; and
(7) Engaging in [one] retail [concession activity and one tour-related activity], commercial, and tourism activities that are not related to facilitating research, development, and commercialization of natural energy resources in Hawaii; provided that all income derived from these activities shall be deposited in the natural energy laboratory of Hawaii authority special fund."

SECTION 3. Section 227D-3, Hawaii Revised Statutes, is amended to read as follows:

"**§227D-3 Powers of the authority.** The authority may:

(1) Sue and be sued;
(2) Have a seal and alter the same at its pleasure;
(3) Promote the use of the geothermal energy and natural resources sites for the purposes provided by law;
(4) Through its executive director appoint officers, agents and employees without regard to chapters 76 and 77 and to establish the salaries therefor;
(5) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its operation, facilities, parks, properties, and projects;
(6) Make, execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter with any private person, firm, partnership, association, company, or corporation only as it may be necessary in the conduct of its business and on such terms as it may deem appropriate; provided that the authority shall not obligate any funds of the State except as have been appropriated to it. Notwithstanding the foregoing, the authority may enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, a foreign nation, a state, a territory, or a possession, or with any political subdivision thereof;
(7) Accept, hold, or expend gifts or grants in any form from any public agency or private source, or from any other source;
(8) Impose and collect fees pertaining to the use of properties and facilities of the authority;
(9) Formulate budgets to provide for the operation of the facilities of the authority;
(10) Submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session;
(11) Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
(12) Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and designate a qualified person as its agent for this purpose, and own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
(13) Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishings or improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with a research and technology park;
(14) Prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or research and technology park, and from time to time, modify these plans, specifications, designs, or estimates;
(15) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(16) Procure insurance against any loss in connection with its properties and other assets and operations in amounts and from insurers as it deems desirable;

(17) Issue bonds pursuant to this chapter in principal amounts as may be authorized from time to time by law to finance the cost of a project, including the repair or addition to its parks and facilities as authorized by law and to provide for the security thereof as permitted by this chapter;

(18) Lend or otherwise apply the proceeds of the bonds issued for a project or a research and technology park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or research and technology park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;

(19) With or without terminating a project agreement, exercise any and all rights provided by law for entry and re-entry upon or to take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement;

(20) Create an environment that supports appropriate natural resource utilization and results in economic development, including: supporting research projects and facilitating the transition from research and development to pilot scale and then to full commercial operation of companies utilizing the natural resources available at the research and technology parks; developing educational and conservation programs; supporting commercialization of the natural resources available at the research and technology parks, if the commercialization is compatible with the research, development, and other retail, commercial, and tourism activities of the research and technology parks; identifying issues and impediments to the development of natural resource utilization; and providing policy analysis and information important to the development of natural resource utilization in Hawaii;

(21) Develop programs that support projects and companies which locate at the research and technology parks;

(22) Attract appropriate new uses of the natural resources in Hawaii[;], including retail, commercial, and tourism activities; and

(23) Do any or all other acts reasonably necessary to carry out the purposes of the authority."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 39

S.B. NO. 808

A Bill for an Act Relating to Liquor Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commission [may], at the time of renewal or at any time, may revoke, suspend, or place conditions or restrictions on any license issued under this chapter for the purpose of preventing activities within the licensed premises or adjacent areas under the licensee's control that are potentially injurious to the health, safety, and welfare of the public including but not limited to criminal activity, including assault, drug dealing, drug use, or prostitution, upon petition of the administrator of the appropriate county agency, proper notice to the licensee, and a hearing before the commission pursuant to chapter 91."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 40

S.B. NO. 1062

A Bill for an Act Relating to Agricultural Park Leases.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 166-7, Hawaii Revised Statutes, is amended to read as follows:

"**§166-7 Applicants.** [A] Any person, including a revocable living trust, partnership, corporation, limited liability company, [or] association, or an agricultural cooperative organized under chapter 421 at least seventy-five per cent of the trustees, partners, officers and stockholders, or members of which qualify individually, may apply for an agricultural park lease if the person, trustees, partners, officers and stockholders, or members are eligible and qualified according to criteria set forth in rules adopted by the board in conformance with section 166-9."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved April 26, 1999.)

ACT 41

S.B. NO. 1086

A Bill for an Act Relating to Boating Penalties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§200- General administrative penalties.** (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder. Each day or instance of violation shall constitute a separate offense.

(b) For violations involving pollution of the waters of the State, the administrative fine shall be as follows:

(1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than $10,000;

(2) For a second violation within five years of a previous violation, by a fine of not more than $15,000; and

(3) For a third or subsequent violation within five years of the last violation, by a fine of not more than $25,000.

(c) For all other violations the administrative fine shall be as follows:

(1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than $5,000;

(2) For a second violation within five years of a previous violation, by a fine of not more than $10,000; and

(3) For a third or subsequent violation within five years of the last violation, by a fine of not more than $15,000.

(d) Any criminal action against a person for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude the State from pursuing civil legal action to recover administrative fines, fees and costs, or damages against that person. Any civil legal action to recover administrative fines, fees and costs, or damages for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude the State from pursuing any appropriate criminal action against that person. All fines, fees and costs, or damages recovered by the department under this section shall be deposited in the boating special fund."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 42

S.B. NO. 1216

A Bill for an Act Relating to Bicycling.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291C-145, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every person operating a bicycle upon a roadway at a speed less than the normal speed of traffic moving in the same direction at such time shall ride as near to the right-hand curb, on the edge of the roadway, or on the shoulder off of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction; except under any of the following situations:

(1) When preparing for a left turn at an intersection or into a private road or driveway, except where prohibited by official traffic-control devices;

(2) When reasonably necessary to avoid conditions (including[,] but not limited to[,] fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb, on the edge of the roadway, or on the shoulder off of the roadway. For purposes of this section, a "substandard width lane" is a lane that is too narrow for a bicycle and a vehicle to travel safely [side by side] side-by-side within the lane; or

(3) When a roadway is designated and signposted to carry traffic in one direction only and has two or more marked traffic lanes, a person operating a bicycle may ride as near to the left-hand curb, on the edge of the roadway, or on the shoulder off of such roadway as practicable."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 43

S.B. NO. 1326

A Bill for an Act Relating to Lender Exemptions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to encourage and facilitate lending from sources outside of the State of Hawaii by making existing exemptions from certain state laws available to such lenders without a registration requirement.

SECTION 2. Section 454-2, Hawaii Revised Statutes, is amended to read as follows:

"**§454-2 Exemptions.** This chapter does not apply to the following:

(1) Banks, trust companies, building and loan associations, pension trusts, credit unions, insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized

under any law of this State or of the United States to do business in the State;

(2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;

(3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney;

(4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesperson; [and]

(5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor[.]; and

(6) Foreign lender as defined in section 207-11."

SECTION 3. Section 454D-2, Hawaii Revised Statutes, is amended to read as follows:

"**§454D-2 Exemptions.** This chapter shall not apply to the following persons:

(1) Real estate brokers and salespersons licensed under chapter 467 and residing in the State who provide collection and mortgage services where the services are limited to those incident to a particular real estate transaction, or where the broker, or the salesperson's broker, has an errors and omissions insurance policy in effect which has, as part of the insurance policy, coverage for activities relating to collection and mortgage services and where a copy of the insurance policy is filed annually with the department of commerce and consumer affairs;

(2) Banks, collection agencies, credit unions, escrow depositories, financial services loan companies, savings and loan associations, and trust companies authorized to do business in the State;

(3) Any financial institution which is an approved lender for programs administered by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs satisfactory proof of that status;

(4) Persons performing the services normally rendered by servicing agents under order of any court; [and]

(5) Persons performing the services normally rendered by servicing agents, but with respect to fewer than five agreements at any one time that would otherwise come within the purview of this chapter[.]; and

(6) Foreign lenders as defined in section 207-11."

SECTION 4. Section 207-14, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 207-15, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 44

S.B. NO. 1403

A Bill for an Act Relating to the Traffic Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291C-111, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The director of transportation, the counties, and owners of private highways, with the consent of the county official responsible for traffic control with respect to highways under their respective jurisdictions shall place signs or curb markings which are clearly visible to an ordinarily observant person prohibiting or restricting the stopping, standing, or parking of vehicles on the highway. Such signs or curb markings shall be official signs and markings and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs[.] or markings."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 45

S.B. NO. 1641

A Bill for an Act Relating to the Public Library System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 312-3.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The state librarian shall submit an annual report on the status of the libraries special fund, to include [deposits] information regarding:

(1) Deposits into the fund and the source of these revenues[, allocations];
(2) Allocations to each public library[, descriptions], including allocations established for both the fiscal year covered by the annual report and the subsequent fiscal year;

(3) Descriptions and amounts of expenditures made from the fund[, and balances];
(4) Balances remaining on June 30 of each year;
(5) Financial information regarding receipt sources by individual libraries; and
(6) Actual expenditure of receipts by individual libraries;

provided that this report shall be submitted to the legislature and to the governor, or the director of finance if so delegated by the governor, no later than twenty days prior to the convening of each regular session of the legislature."

SECTION 2. Section 312-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The state librarian shall submit an annual report on the status of the special fund. The report shall include information about [deposits]:
(1) Deposits made into the fund and the source of these deposits[, and allocations];
(2) Allocations to each public library[, descriptions], including allocations established for both the fiscal year covered by the annual report and the subsequent fiscal year;
(3) Descriptions and amounts of the expenditures made from the fund[, and the];
(4) The balance remaining in the fund on June 30 of each year[.];
(5) Financial information regarding receipt sources by individual libraries; and
(6) Actual expenditure of receipts by individual libraries.

The report shall be submitted to the legislature and the governor not later than twenty days prior to the convening of each regular session. [Any balance remaining in the fund on July 1, 1996, shall be deposited into the general fund.]"

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 46

H.B. NO. 10

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to limit requirements for remedial safety training in the driver improvement program to drivers of vehicles over ten thousand pounds gross vehicle weight, in order to be consistent with federal safety regulations.

SECTION 2. Section 286-202.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Every employer who employs a commercial motor vehicle driver [as categorized in section 286-239, or a category (4) driver in section 286-102,] who

drives a motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds shall provide for every such driver a driver improvement program. This program shall provide a system for continuous driver evaluation and annual driver safety courses approved by the director. For drivers with five years of continuous employment with one employer, this requirement shall be at least once every two years. Every job placement center through which a [category (4) or commercial motor vehicle] driver who drives a motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds is employed on a casual or sporadic basis, and not as a regularly employed driver for any one employer, shall be responsible for providing the driver improvement program for all its [category (4) and commercial motor vehicle] drivers[.], who drive a motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds. For purposes of this subsection only, "job placement center" means any place where persons may register for purposes of employment, and the dispatching of those persons to various jobs as they become available. Any employer or job placement center that violates this subsection shall be fined not more than $500.

(b) Every regularly or casually employed driver of a [category (4) vehicle or a commercial] motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds shall attend the driver improvement program provided by the driver's employer or job placement center. The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this subsection, including but not limited to rules governing attendance. Any driver who does not fulfill the appropriate driver improvement attendance requirement shall be fined not more than $100."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 47 H.B. NO. 791

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to:

(1) Consider if consumer protection is being compromised in real estate transactions in Hawaii as indicated by the Association of Real Estate License Law Officials (ARELLO) which reported that Hawaii, requiring ten hours per two-year licensing period, is ranked forty-six out of forty-nine states for mandatory continuing education hours based on average hours per year of licensing period, with the number one ranked state requiring thirty hours within a two-year licensing period;

(2) Combine continuing education provisions applicable to real estate licensees into a new section for easier review and understanding;

(3) Increase flexibility, range, and the number of options available in the provision of continuing education courses;

(4) Codify the principal brokers' responsibilities in a new section, including requirements for training and educating associated real estate licensees; and

(5) Direct the Hawaii Association of Realtors to convene a work study group and discuss continuing education and other administration issues with various interested parties, and submit any proposed consensus-derived legislation to the next legislature.

SECTION 2. Chapter 467, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§467- **Principal brokers.** (a) The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.

(b) The principal broker shall be responsible for:

(1) The client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices;
(2) The brokerage firm's records, contracts, and documents;
(3) All real estate contracts of the brokerage firm and its handling by the associated real estate salesperson;
(4) The proper handling of any commission application, real estate license application, or renewal application that the principal broker or the brokerage firm expressly agrees to handle on behalf of the applicant, including without limitation, verifying for completeness and appropriate fees, and mailing or delivering the appropriate documents to the commission by the required deadline;
(5) Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;
(6) Setting a policy on continuing education requirements for all associated real estate licensees in compliance with the statutory requirement;
(7) Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;
(8) Establishing and maintaining a training program for all associated real estate licensees; and
(9) Ensuring that all associated real estate licensees are provided information and training on the latest amendments to real estate licensing laws and rules as well as other related laws and rules.

§467- **Continuing education.** (a) The commission shall have the authority to:

(1) Set content and other requirements for continuing education courses, providers, and instructors;
(2) Determine whether requirements have been met;
(3) Specify a mandatory core course or courses or equivalencies for a licensing biennium;
(4) Determine how many hours of a continuing education course will be credited toward the continuing education requirements for real estate licensees;
(5) Develop its own continuing education courses or approve courses developed by others; and
(6) Allow the provision of courses taught by alternative delivery methods with interactive instructional techniques. Interactive instructional techniques may include but are not limited to:
    (A) The opportunity for immediate exchange with an instructor; and
    (B) Assessment and remediation through the assistance of computer, electronic, audio, or audiovisual interactive instruction designed

to internally measure and evaluate whether students have mastered stated learning objectives.

(b) Continuing education providers shall:

(1) Certify that instructors have met the commission requirements;

(2) Ensure that instructors are competent in the subject matter of the course and are current in their knowledge of the subject matter; and

(3) Ensure that the course is based on current information, laws, and rules.

(c) Continuing education instructors shall ensure that their courses are based on current information, laws, and rules.

(d) Continuing education courses shall be designed to improve a licensee's competency, or professional standards and practice and shall:

(1) Be offered by a provider approved by the commission and either be:

(A) Approved by the commission and delivered by an instructor certified by a commission-approved continuing education provider;

(B) A national course delivered by an instructor certified by the National Association of Realtors or its affiliates;

(C) A national course delivered by an instructor certified by the Building Owners and Managers Association, the Community Associations Institute, or any other national organization approved by the commission; or

(D) Certified by the Association of Real Estate License Law Officials;

(2) Be designed to allow students to exceed minimal entry level competency in the subject matter of the course including consumer protection in real estate transactions; and

(3) Not require an examination."

SECTION 3. Section 467-11.5, Hawaii Revised Statutes, is amended to read as follows:

"**§467-11.5 Prerequisites for license renewal.** (a) Prior to the license renewal of a real estate broker or real estate salesperson, the licensee shall provide the commission with proof of having attended ten hours of continuing education or its equivalent as determined by the commission during the two-year period preceding the application for renewal. Failure to satisfy the continuing education requirement by the license expiration date shall result in the license being automatically placed on an "inactive" status.

(b) To reactivate a license which has been placed on an "inactive" status, the licensee shall submit to the commission proof of having satisfied the continuing education requirement of this section, a complete application setting forth the information as may be prescribed or required by the commission, and payment of the proper fee.

[(c) Courses offered by alternative delivery methods with interactive instructional techniques may be approved by the commission. Interactive instructional techniques may include but are not limited to:

(1) The opportunity for immediate exchange with an instructor; and

(2) Assessment and remediation through the assistance of computer, electronic, audio, or audiovisual interactive instruction designed to internally measure and evaluate whether students have mastered stated learning objectives.

(d)] (c) No license shall be renewed if the license trade name, partnership, or corporation is not currently registered with the department of commerce and consumer affairs."

SECTION 4. Section 467-1, Hawaii Revised Statutes, is amended by deleting the definition of "continuing education".

["'"Continuing education" means a course:

(1) With a curriculum level above the current minimal competency entry level in any of the following areas:
   (A) Protection of the general public in its real estate transactions;
   (B) Consumer protection; or
   (C) Improvement of the licensee's competency and professional standards and practice; and
(2) That is:
   (A) Approved by the commission and delivered by an approved continuing education instructor;
   (B) A national course taught by a nationally certified instructor certified by the National Association of Realtors or its affiliates; or
   (C) A national course taught by a nationally certified instructor certified by, including but not limited to, the Building Owners and Managers Association, the Community Associations Institute, or other national organization approved by the commission;

provided that the continuing education course is offered by an approved continuing education provider. Continuing education courses shall not require an examination."]

SECTION 5. The Hawaii Association of Realtors shall initiate a work study group during the legislative interim to discuss continuing education and administration issues with the real estate commission, the department of commerce and consumer affairs, and other interested parties. The work study group's consensus recommendations on proposed legislation to address consumer protection and licensee concerns shall be submitted to the president of the senate, the speaker of the house, the co-chairs of the senate committee on commerce and consumer protection and the chair of the house committee on consumer protection and commerce prior to the convening of the regular session of 2000.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 48 H.B. NO. 936

A Bill for an Act Relating to Commercial Paper.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 490, article 3, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§490:3- Charges for dishonored checks.** The payee or a holder in due course of any check, draft, or order for the payment of money that has been dishonored for lack of funds or credit to pay the check, draft, or order or because the

maker has no account with the drawee shall be allowed to assess the maker a reasonable service charge of not more than $20."

SECTION 2. Section 490:3-506, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§490:3-506[]] Dishonored check; action for treble damages; procedures.** (a) In any action against a person who makes any check, draft, or order for the payment of money [which] that has been dishonored for lack of funds or credit to pay the [same,] check, draft, or order or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages in an amount equal to $100 or triple the amount for which the check, draft, or order is drawn, whichever is greater; provided that damages recovered under this section shall not exceed by more than $500 the amount of the check, draft, or order, and may be awarded only if:

(1) The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order and any service charge assessed under section 490:3- not less than ten days before commencing the action; and

(2) The defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the sum of the amount demanded[.] and any service charge assessed under section 490:3- .

The written demand shall include notice that if the money is not paid within ten days, triple damages may be incurred by the defendant. The plaintiff shall provide the defendant written notice of demand for payment by certified mail, restricted delivery, at the last known address of the defendant with a request for a return receipt and marked "deliver to addressee only".

(b) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff, as satisfaction of the claim, an amount of money equal to the sum of the amount of the check and the incurred court and service costs[.] including attorney's fees and any service charge assessed under section 490:3- .

(c) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury may waive all or part of the statutory damages; provided the court or jury shall render judgment against the defendant for not less than the amount of the dishonored check plus incurred court and service costs[.] including attorney's fees and any service charge assessed under section 490:3- ."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 49

H.B. NO. 996

A Bill for an Act Relating to Meetings of State and County Boards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 92-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
(4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
(5) To investigate proceedings regarding criminal misconduct;
(6) To consider sensitive matters related to public safety or security; [and]
(7) To consider matters relating to the solicitation and acceptance of private donations[.]; and
(8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 50

H.B. NO. 1072

A Bill for an Act Relating to Reverse Mortgages.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 506, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§506- Reverse mortgage loan.** (a) Prior to accepting an application for a reverse mortgage loan, a lender shall refer every borrower to counseling from an organization that is a housing counseling agency approved by the United States Department of Housing and Urban Development, and shall receive certification from the counselor that the borrower has received counseling. The certificate must

be signed by the borrower and the counselor and include the date of counseling, the name, address, and telephone number of both the borrower and the organization providing counseling, and shall be maintained by the holder of the reverse mortgage throughout the term of the reverse mortgage loan.

(b) A lender that fails to comply with the requirements of subsection (a) shall be deemed to have engaged in an unfair method of competition or unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.

(c) "Reverse mortgage loan" means a loan made to a borrower wherein the committed principal amount is secured by a mortgage on residential property owned by the borrower and which is due upon sale of the property securing the loan, or upon the death of the last surviving borrower, or upon the borrower terminating use of the real property as the principal residence, or upon the borrower's default. For purposes of this section, "reverse mortgage loan" does not include loans:

(1) Insured by the United States Department of Housing and Urban Development;

(2) Intended for sale to the Federal National Mortgage Association (also known as "Fannie Mae") or to the Federal Home Loan Mortgage Corporation (also known as "Freddie Mac"); or

(3) For which mortgage counseling is required under other state or federal laws."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 51 H.B. NO. 1120

A Bill for an Act Relating to Personal Care Services Payment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-64, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.[1]

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 52 H.B. NO. 1125

A Bill for an Act Relating to Recovery of Medical Payments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to clarify the law with respect to the amount to be reimbursed for the costs of medical assistance provided by the department of human services when damages are recovered from a third party who is legally responsible for causing the injuries, or who may be legally responsible for any payment obligation as a result of the injury. The department of human services is required to seek reimbursement of the costs of medical assistance in third-party liability situations by congressional mandate as a condition for eligibility for federal funding of the medical assistance program. The reimbursements have the potential to reduce the State's expenditure for its medical assistance program. In most cases, state benefits are provided when a claimant suffers physical injury. It is the intent of the legislature that, in third-party liability situations, the medical assistance program of the department of human services must be fully reimbursed before the claimant can receive any money from a settlement or award.

Consequently, one of the purposes of this Act is to clarify that the full amount of the costs of medical assistance is to be reimbursed and that any third-party reimbursement to a claimant is required to be applied to the costs of medical assistance, which costs will otherwise have to be borne by the department of human services and the taxpaying public.

A further intent of this Act is to clarify that the department of human services is given the discretion to settle or compromise its reimbursement rights for less than the full amount due.

The legislature further finds that some claimants are seeking to avoid or circumvent full reimbursement of the costs of medical assistance by seeking relief in the courts rather than requesting an administrative hearing to air the dispute. Traditionally, the courts have required that such a claimant exhaust the administrative remedies provided in section 346-37(g), Hawaii Revised Statutes. However, in a recent case, the court determined that the courts have jurisdiction to determine the amount to be reimbursed to the department of human services for the costs of medical assistance. Therefore, because any recovery in a liability situation without reimbursement would constitute a duplication of public assistance benefits, it is the further purpose of this Act to require that a medical assistance recipient first pursue any reimbursement dispute through the administrative hearing process.

Finally, this Act specifies that the department of human services may serve notices of lien by either certified or registered mail.

SECTION 2. Section 346-37, Hawaii Revised Statutes, is amended to read as follows:

"**§346-37 Recovery of payments and costs of medical assistance.** (a) If a recipient under this chapter dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department shall have a valid claim against the estate for the amount of social services overpayments, financial assistance overpayments, or burial payments granted. The department shall file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age fifty-five or over when such medical assistance was received and there is no surviving spouse, or surviving child who is under twenty-one years of age, or blind, or disabled. The department shall file a

claim against the estate of a recipient of medical assistance who was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution only if there is no surviving spouse or surviving child who is under twenty-one years of age, or blind, or disabled.

(b) If any portion of any public assistance, including medical assistance, food stamps, or burial payment, was obtained by any fraudulent device, including but not limited to those under section 346-34, or if any public assistance, including medical assistance, food stamps, or burial payment, was furnished or provided after receipt of income or resources which were not reported to the department as required by this chapter or by the department, the department may file a claim against the estate of the deceased recipient notwithstanding subsection (a).

(c) If the department has provided medical assistance or burial payment to a person who was injured, suffered a disease, or died under circumstances creating a tort or other liability or payment obligation against a third person, the department shall have a right to recover from the third person an amount not to exceed the full amount of the costs of medical assistance or burial payment furnished or to be furnished by the department.

(d) The department [shall], as to this right of reimbursement, shall also be subrogated to [any right or claim] all rights or claims that a claimant[, defined in subsection (k),] has against the third person for [special] all damages [to] not to exceed the full extent of the costs of medical assistance or burial payment furnished or to be furnished by the department. The department's right to full reimbursement of the costs of medical assistance or burial payment as a subrogee of a claimant shall not be diminished by the recovery of any judgment, settlement, or award of an amount less than the value of the original or settled claim as perceived or calculated by the claimant or any other person.

To enforce its rights, the department may intervene or join in any action or proceeding brought by a claimant against the third person [who is liable]. If the action or proceeding is not commenced within six months after the first day on which medical assistance or burial payment is furnished by the department in connection with the injury, disease, or death involved, the department may institute and prosecute legal proceedings against the third person [who is liable] for the injury, disease, or death, in a state court, either alone (in its own name or in the name of a claimant) or in conjunction with the claimant.

[(d) If a claim is made by the claimant under subsection (c) against a third person, the claimant shall give timely notice of the action to the department.]

(e) An attorney representing a claimant shall make reasonable inquiry as to whether the claimant has received or is receiving from the department medical assistance related to the incident involved in the action [from the department]. If the claimant, claimant's attorney, or claimant's heirs, representatives, or beneficiaries have received from the department actual notice of its right to reimbursement or if they have reason to know that the claimant has received or is receiving from the department medical assistance related to the incident, then the claimant, claimant's attorney, or claimant's heirs, representatives, or beneficiaries shall give to the department timely written notice of any claim or action against a third person. At any time during the pendency of any claim or action, the claimant, claimant's attorney if represented, or claimant's heirs, representatives, or beneficiaries may contact the department to ascertain the full amount of the costs of medical assistance or burial payment made, which information shall be provided in a reasonable time by the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

(1) The claimant's attorney, if the attorney has received actual notice from the department of a lien or if the attorney has reason to know that a lien exists[,]; or

(2) The claimant or the claimant's heirs, representatives, or beneficiaries, if not represented by an attorney who has received actual notice of the lien, shall notify the department immediately[.] in order to ascertain and pay the full amount of the costs of medical assistance or burial payment made.

[(e)] (f) If [third party] liability is found to exist, or if the issue of third-party liability is settled or compromised without a finding of liability, regardless of who institutes legal proceedings or seeks other means of recovering, the department shall have a right to recover the full amount of the costs of medical assistance or burial payment made. To aid in the recovery of the costs the department shall have a first lien in the full amount of the costs of medical assistance or burial payment made against the proceeds from [special] all damages awarded in a suit or settlement. The lien shall attach as provided by subsection [(f). If a notice of lien is properly served upon the attorney representing the claimant as provided in subsection (f), that attorney shall satisfy the lien prior to disbursing any of the proceeds of the suit or settlement to the attorney's client. If a notice of lien is properly served upon the third person under subsection (c), the third person's agent or attorney, or upon the third person's insurance company, as provided in subsection (f), it shall be the responsibility of the third person to satisfy the lien prior to disbursing any of the proceeds to the claimant's attorney. This section is not intended to restrict or diminish the right of the department to settle or compromise its subrogation or lien rights under this section.] (g).

[(f)] (g) The lien of the department for reimbursement of costs of medical assistance or burial payments under subsection [(e),] (f), shall [not] attach [unless a] by a written notice of lien [is] served upon the claimant's attorney or upon the third person, the third person's agent, attorney, or insurance company. The method of service shall be by certified or registered mail, return receipt requested, or by delivery of the notice of lien personally to the individuals referred to. Service by certified or registered mail is complete upon receipt. The notice of lien shall state the name of the injured, diseased, or deceased person, the amount of the lien, and the date of the accident or incident which caused the injuries, disease, or death which necessitated the department's medical assistance or burial payments. If the notice of lien is served upon the claimant's attorney, the notice of lien shall state that the claimant's attorney shall pay the full amount of the lien from the proceeds of any judgment, settlement, or compromise based on the incident or accident. If the notice of lien is served upon the third person [under subsection (c)], the third person's agent, attorney, or insurance company, the notice of lien shall state that the third person shall [satisfy] pay the full amount of the lien prior to disbursing any of the proceeds to the claimant or to the claimant's attorney. A notice of lien may be amended from time to time until extinguished, each amendment taking effect upon proper service.

(h) The lien shall attach as provided by subsection (g). If a notice of lien is properly served upon the attorney representing the claimant as provided in subsection (g), that attorney shall pay the full amount of the lien, prior to disbursing any of the proceeds of the suit or settlement to the attorney's client. If a notice of lien is properly served upon the third person, the third person's agent or attorney, or the third person's insurance company, as provided in subsection (g), it shall be the responsibility of the person receiving the notices to pay the full amount of the lien prior to disbursing any of the proceeds to the claimant's attorney.

If, after having received timely written notice of any claim or action under subsection (e), the department did not intervene or join in the action or prosecute its

own claims or actively participate with claimant or claimant's attorney in the prosecution of claims, or a distribution agreement was not entered into between the parties, then the department shall determine its fair contribution toward attorney fees and costs incurred in the action that shall be a reasonable amount based solely upon legitimate costs and services rendered by the claimant or claimant's attorney in recovering the lien amount. Any dispute regarding the department's determination of its contribution to fees and costs may be submitted to administrative hearing under subsection (i) or a court of competent jurisdiction. The value of services contributed by the claimant and department may be considered in fairly allocating fees and costs between the claimant and department where both contribute to recovering the lien amount.

[(g) If] (i) Notwithstanding any other law to the contrary, if there is a dispute between the claimant, the claimant's agent[,] or the claimant's attorney, and the department concerning the existence of the lien or the amount of the lien, or the amount to be reimbursed, the claimant, the claimant's agent, or the claimant's attorney [may] shall request in writing a hearing on the dispute. After receipt by the department of a written request, the department shall conduct an administrative hearing within a reasonable period of time. Chapter 91, including any provisions for judicial review or appeal, shall apply to the hearing. Funds sufficient to [extinguish the lien] fully satisfy the reimbursement rights of the department shall be either retained by the person [or entity] served with the notice of lien, [or] shall be paid to the department, or otherwise reserved subject to agreement with the department pending its decision[.] and any subsequent judicial review or appeal.

[(h)] (j) Upon the recovery of any claim as provided in this section, the amount recovered shall be paid into the treasury of the State, and if the amount for which claim was paid was in part from federal funds, the proper portion thereof shall be paid by the director of finance into the treasury of the United States, and the director of finance shall report the payment to the department.

[(i)] (k) Any person [failing to satisfy the lien as required by subsections (e) and (f),] who is subject to the lien who fails to pay the full amount due to the department for reimbursement of the costs of medical assistance, although able to do so from the proceeds of the suit or settlement, shall be personally liable to the department for any damage proximately caused to the department by such failure.

[(j)] (l) No action taken by the department in connection with the rights under this section shall deny to the claimant the recovery for that portion of the claimant's [damage] damages not covered under this section.

[(k)] (m) For purposes of this section[, the term "claimant"]:

"Claimant" [shall include] includes an injured or diseased person, the person's guardian, or the personal representative, estate, dependents, or survivors, of the deceased person.

"Costs of medical assistance" furnished or to be furnished by the department includes:

(1) The value or cost of medical care services provided directly by the department;

(2) The amount paid by the department to a provider for medical care services rendered or to be rendered; and

(3) The value or cost of medical care services rendered or to be rendered by a provider that has received the equivalent of an insurance benefit, capitation rate, and other fee or like charge paid by the department or by a medical care insurer to provide for medical care services.

"Third person" includes any person, business, corporation, partnership, or entity of any kind or nature, including employers and insurance carriers, that is potentially liable to the claimant for any tort, liability, payment, reimbursement, or benefit of any kind or nature by reason of any injury, disease, or death.

[(l)] (n) The department may agree with a provider or medical care insurer for the provision of medical care services or medical assistance to any claimant, and the agreement may provide for the department to be the exclusive entity authorized to recover all costs of medical assistance rendered to a claimant. The department may recover all costs through the use of the lien procedures established by this section.

[(m) For purposes of this section, the term "costs of medical assistance" furnished or to be furnished by the department shall include:

(1) The value or cost of medical care services provided directly by the department;

(2) The amount paid by the department to a provider for medical care services rendered or to be rendered;

(3) The value or cost of medical care services rendered or to be rendered by a provider that has received the equivalent of an insurance benefit, capitation rate, and other fee or like charge paid by the department or by a medical care insurer to provide for medical care services.]

(o) In third-party liability situations, the medical assistance program of the department shall be fully reimbursed before the claimant receives any money from the settlement or award. This section is not intended to restrict or diminish the right of the department to settle or compromise its reimbursement rights under this section for less than the full amount due or enter into any agreement with claimant, claimant's attorney or representative, or other party for the distribution of proceeds from a suit or settlement."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 53 H.B. NO. 1350

A Bill for an Act Relating to the Use of Recycled Oil.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that petroleum is the major source of energy for Hawaii and will likely continue to be Hawaii's major energy source for many years. While Hawaii has and always will continue to seek alternative sources of energy that safeguard our fragile and unique island environment, the legislature realizes that the use of oil products will dominate the State's energy resources in the foreseeable future. Therefore, it remains in the State of Hawaii's best interest, as stated in the public procurement code in section 103D-1005, Hawaii Revised Statutes, "to encourage the use of recycled products, contracts shall be awarded to the lowest responsible and responsive bidders, with preference being given to the products containing recycled material." Section 103D-1005(b), Hawaii Revised Statutes, requires state purchasing agencies and encourages county purchasing agencies to, "apply preference to the purchase of products with recycled content before purchasing products without any recycled content." That subsection also requires, "to the maximum extent economically feasible, the purchase of materials that may be recycled or reused when discarded, and to avoid the purchase of products deemed environmentally harmful."

Sharing the concerns expressed in the previous provisions of the Hawaii Revised Statutes, other states such as Washington, Oregon, and California have already passed legislation that specifically requires state and county purchasing agencies to procure lubricating or industrial oil from the seller whose oil product contains the greater percentage of recycled oil.

The purpose of this Act is to continue previous legislative mandates to promote the use of recycled products by state and county agencies. Requiring that public contracts be awarded only to vendors whose oil product contains the greatest percentage of recycled oil will continue to protect our fragile environment.

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . PREFERENCE FOR OIL PRODUCTS WITH GREATER RECYCLED CONTENT

§103D-A Short title. This part shall be referred to as the "Recycled Oil Act".

§103D-B Definitions. As used in this part:

"Industrial oil" means any compressor, turbine, or bearing oil, hydraulic oil, metal working oil or refrigeration oil.

"Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.

"Procuring agency" means any state or county agency or any person contracting with that agency in respect to work performed under a contract for lubricating oil, industrial oil or involves the use of lubricating oil or industrial oil.

"Recycled oil" means used oil that has been prepared for reuse as a petroleum product by refining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws, rules, and regulations.

"Virgin oil" means oil which has been refined from crude oil and which has not been used or contaminated with impurities.

§103D-C Preference for oil products with greater recycled content. Notwithstanding any law to the contrary, any procurement officer that purchases lubricating oil and industrial oil under this chapter shall purchase the oil from the seller who certifies the oil product containing the greatest percentage of recycled oil. The procurement office may purchase an oil product containing a lower percentage of recycled oil provided that the specific oil product containing recycled oil is:

(1) Not available within a reasonable period of time or in quantities necessary to meet an agency's needs;

(2) Not able to meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements;

(3) Available only at a cost greater than the cost of comparable virgin oil products; or

(4) Likely to breach an existing warranty that requires the purchase of virgin oil products for exclusive use in vehicles or equipment whose warranties expressly prohibit the use of products containing recycled oil.

§103D-D Affirmative program for procuring oils with recycled content. (a) Each chief procurement officer shall establish and maintain an affirmative program for procuring oils containing the maximum content of recycled oil.

(b) An affirmative program shall include:

(1) Placement of descriptions of the preference of recycled oil products in publications used to solicit bids from suppliers or vendors;

(2) Descriptions of the recycled oil procurement program at the bidders' conferences;

(3) Discussion of the preference program in lubricating oil and industrial oil procurement solicitations, invitations for bids, requests for proposals, or other solicitations for offers under this chapter; and

(4) Efforts to inform trade associations about the preference program."

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated in this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

ACT 54 H.B. NO. 1703

A Bill for an Act Relating to Waimanalo.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1996, in an effort to address the concerns of Waimanalo area farmers who had previously been deemed ineligible to obtain a lease under Act 237, Session Laws of Hawaii (SLH) 1988, the legislature enacted Act 257, SLH 1996, to authorize the department of land and natural resources to enter into long-term lease negotiations and execute long-term leases with those revocable permittees who are situated in the Waimanalo area, who are farming. The legislature finds that Act 257, SLH 1996, has been successful and should be extended.

The purpose of this Act is to allow the department of land and natural resources to continue entering into long-term lease negotiations and to execute long-term leases with eligible Waimanalo farmers.

SECTION 2. Act 257, Session Laws of Hawaii 1996, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval and shall be repealed on [July 1, 1999.] July 1, 2001."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 1999.

(Approved April 26, 1999.)

ACT 55 H.B. NO. 1013

A Bill for an Act Making An Appropriation for the Hawaii Tourism Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the constitution of the State of Hawaii.

SECTION 2. Act 156, Session Laws of Hawaii 1998, established the Hawaii tourism authority and the tourism special fund, provided for a percentage of the transient accommodations tax to be deposited into the tourism special fund beginning on January 1, 1999, and appropriated $500,000 for tourism research for the fiscal year 1998-1999. Deposits to the tourism special fund from January 1 through June 30, 1999 are projected to total $31,000,000.

SECTION 3. There is appropriated out of the tourism special fund the sum of $31,000,000, or so much thereof as may be necessary or available for the fiscal year 1998-1999, to be expended by the Hawaii tourism authority for the purposes set forth in Act 156, Session Laws of Hawaii 1998; provided that the Hawaii tourism authority shall reimburse the general fund for amounts expended by the authority from the general fund since January 1, 1999, for the authority's operations.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 28, 1999.)

ACT 56 H.B. NO. 1

A Bill for an Act Relating to Child Passenger Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that, according to the National Traffic Safety Administration, many children die or are disabled in survivable crashes because they were not properly restrained in car seats or seat belts. In Hawaii, children between the ages of three and four who ride in cars may be legally, but unsafely, restrained with seat belts rather than car seats. Seat belts are designed for older children and adults, not children in this age group whose size and physical development make seat belts less effective and, in some cases, unsafe. The legislature also recognizes that Hawaii's child passenger restraint law does not conform to the age standard proposed in the National Committee on Uniform Traffic Laws and Ordinances' model child restraint law. Adhering to the nationally recommended age standard will not only increase the protection afforded to children in this age group, but it will also clarify Hawaii's law, making compliance and enforcement more likely.

The purpose of this Act is to increase the safety of Hawaii's children by amending Hawaii's child passenger restraint law to reflect the National Traffic Safety Administration's recommendations.

SECTION 2. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided in this section, no person operating a motor vehicle on a public highway in the State shall transport a child under four years of age [except under the following circumstances:

(1) If the child is under three years of age,] unless the person operating the motor vehicle [shall ensure] ensures that the child is properly restrained in a child passenger restraint system approved by the United States Department of Transportation at the time of its manufacture[; or

(2) If the child is three years of age or older but less than four years of age, the person operating the motor vehicle must either ensure that the child is properly restrained in a child passenger restraint system approved by the United States Department of Transportation at the time of its manufacture or ensure that the child is restrained by a seat belt assembly]."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved May 13, 1999.)

ACT 57

S.B. NO. 737

A Bill for an Act Relating to Noise.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 342F, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§342F- Projects exempt from noise permit requirements.** (a) Except as provided in subsection (b), any construction project:

(1) For a dwelling; or

(2) With a total cost of less than $250,000 based on the value of the project listed on the building permit,

shall be exempt from the noise permit requirements of section 342F-4; provided that written notification of the intent to construct shall be submitted to the department by the person responsible for the construction project. The notification shall include information concerning the person responsible for the construction project, type of construction, location, and estimated duration of the construction project. The notification also shall include an acknowledgement that the construction project shall be subject to operational times and a maximum noise level of seventy-eight decibels when measured at any point at or beyond the property line of the construction premises.

(b) The exemption in subsection (a) shall not apply to any construction project which:

(1) Emits noise in excess of the maximum permissible sound levels established under the state community noise code adopted by the department which occur:

(A) Before 7:00 a.m. and after 6:00 p.m. on Monday to Friday;

(B) Before 9:00 a.m. and after 6:00 p.m. on Saturday; and

(C) On Sunday and holidays;

or

(2) Uses hoe-rams or pile drivers;

provided that subsection (a) shall not apply to a construction project that emits noise exceeding seventy-eight decibels, regardless of the time of occurrence of the noise.

(c) Violation of this section shall be subject to a fine not exceeding $100 per violation; provided that each day of a violation shall constitute a separate offense; and provided further that a violation exceeding five days shall be subject to the penalties under section 342F-9(b).

(d) As used in this section:

"Construction" means any or all activities including those activities necessary or incidental to the erection, demolition, renovation, or alteration of buildings.

"Dwelling" means a room or rooms connected together constituting an independent housekeeping unit for an individual or a family, and containing facilities for bathing, cooking, or both.

"Notification" means a formal notice to the department of the intent to construct a project exempt from noise permit requirements under subsection (a).

§342F- Fees for notification. The director may establish reasonable fees for notifications and to cover the cost of implementation, recordkeeping, and any necessary inspections to ascertain compliance with the provisions of the state community noise rules."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect upon its approval.

(Approved May 13, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 58 S.B. NO. 738

A Bill for an Act Relating to Noise Pollution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The length of time involved in the issuance of state permits places a significant burden on the developers of construction projects. Currently, the time allotted to the department of health to grant noise control permits is one-hundred-eighty days. Shortening the noise pollution permit review period will allow development projects to proceed in a more timely manner.

The purpose of this Act is to require the department of health to grant or reject noise control permits within thirty days instead of one-hundred-eighty days.

SECTION 2. Section 342F-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) [The failure of] Except for applications for which the director deems a public informational meeting, hearing, or notice is appropriate, the director [to] shall act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within [one hundred eighty] thirty days of the receipt of [such] a properly completed application [shall be deemed a grant of such application provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof].

For applications for which the director deems a public informational meeting, hearing, or notice is appropriate, the director shall act on the application within ninety days of the receipt of a properly completed application.

If the director determines that extraordinary circumstances exist on an application, the director shall extend the ninety-day period up to an additional ninety days."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 13, 1999.)

ACT 59 H.B. NO. 1037

A Bill for an Act Making An Emergency Appropriation for the Unclaimed Property Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the Governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 328, Session Laws of Hawaii 1997, as amended by Act 116, Session Laws of Hawaii 1998, appropriated a certain designated sum to the department of budget and finance to provide funds for the payment of claims under the unclaimed property program as set forth in chapter 523A, Hawaii Revised Statutes, for the fiscal year beginning July 1, 1998 and ending June 30, 1999.

The unclaimed property program will expend all appropriated funds before the end of the fiscal year and will be unable to meet its fiscal obligations to satisfy claims filed against it.

The purpose of this Act is to appropriate additional moneys to satisfy claims filed with the unclaimed property program.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $1,000,000, or so much thereof as may be necessary for fiscal year 1998-1999, to be used for the payment of judgments and claims under the unclaimed property program.

SECTION 4. The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 5. The director of finance shall report to the legislature not later than twenty days before the convening of the 2000 regular session on the disbursement of funds appropriated in this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 26, 1999.)

ACT 60 H.B. NO. 1038

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1995-1999 agreement with the exclusive representative of bargaining unit 1:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 18,115,983	$ 10,372,499	$ 10,372,499
Special Funds	$ 7,783,373	$ 4,365,092	$ 4,365,092
Federal Funds	$ 1,085,313	$ 580,554	$ 580,554
Other Funds	$ 278,965	$ 169,862	$ 169,862

SECTION 2. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of items negotiated in the 1995-1999 agreement with the exclusive representative of bargaining unit 1:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 281,473	$ 142,789	$ 142,789

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1995-1997 and 1997-1999 fiscal bienniums salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 1:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 31,349	$ 28,489	$ 28,489

SECTION 4. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of the 1995-1997 and 1997-1999 fiscal bienniums salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from bargaining unit 1:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 1,369	$ 2,435	$ 2,435

PART II

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 2:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 930,351	$ 777,335	$ 777,335
Special Funds	$ 294,222	$ 234,570	$ 234,570
Federal Funds	$ 13,844	$ 11,108	$ 11,108
Other Funds	$ 18,061	$ 14,475	$ 14,475

SECTION 6. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 2:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 6,186	$ 4,964	$ 4,964

PART III

SECTION 7. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 3:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 12,223,440	$ 9,364,601	$ 9,391,141
Special Funds	$ 2,265,978	$ 1,663,929	$ 1,664,104
Federal Funds	$ 1,682,383	$ 1,333,099	$ 1,334,368
Other Funds	$ 365,093	$ 282,638	$ 282,639

SECTION 8. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 3:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 1,939,203	$ 1,458,097	$ 1,458,097
Special Funds	$ 58,526	$ 39,359	$ 39,359

SECTION 9. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 3:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 1,277,806	$ 907,036	$ 907,036
Special Funds	$ 197,734	$ 141,325	$ 141,325
Federal Funds	$ 78,400	$ 59,350	$ 59,350
Other Funds	$ 19,407	$ 12,523	$ 12,523

SECTION 10. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C,

Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from bargaining unit 3:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 105,139	$ 79,458	$ 79,458

PART IV

SECTION 11. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 4:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 601,637	$ 425,515	$ 425,515
Special Funds	$ 144,284	$ 104,109	$ 104,109
Federal Funds	$ 101,429	$ 77,889	$ 77,889
Other Funds	$ 32,183	$ 22,532	$ 22,532

SECTION 12. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 4:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 187,013	$ 130,395	$ 130,395
Special Funds	$ 7,121	$ 5,116	$ 5,116

SECTION 13. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 4:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 7,780	$ 6,313	$ 6,313
Special Funds	$ 2,044	$ 1,665	$ 1,665

SECTION 14. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from bargaining unit 4:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 1,193	$ 1,964	$ 1,964

PART V

SECTION 15. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the

following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 6:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 3,645,252	$ 3,623,880	$ 3,691,542
Federal Funds	$ 56,837	$ 47,235	$ 47,235

SECTION 16. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 6:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 279,021	$ 236,718	$ 236,718
Federal Funds	$ 5,760	$ 4,925	$ 4,925

PART VI

SECTION 17. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 8:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 2,696,877	$ 1,827,778	$ 1,827,778
Special Funds	$ 208,310	$ 135,477	$ 135,477
Federal Funds	$ 41,683	$ 27,818	$ 27,818
Other Funds	$ 460,385	$ 298,491	$ 298,491

SECTION 18. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 8:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 98,386	$ 65,374	$ 65,374
Special Funds	$ 3,171	$ 1,821	$ 1,821
Other Funds	$ 2,881	$ 1,757	$ 1,757

PART VII

SECTION 19. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 9:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 1,699,743	$ 1,334,799	$ 1,334,799
Special Funds	$ 2,783,971	$ 2,215,532	$ 2,215,532

Federal Funds	$ 205,969	$ 159,567	$ 159,567
Other Funds	$ 19,111	$ 18,149	$ 18,149

SECTION 20. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 9:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 10,991	$ 7,706	$ 7,706

SECTION 21. There are appropriated or authorized from the source of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 9:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
Special Funds	$ 5,271	$ 4,224	$ 4,224

PART VIII

SECTION 22. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1995-1999 agreement with the exclusive representative of bargaining unit 10:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 10,399,204	$ 6,932,913	$ 6,932,913
Special Funds	$ 4,954,813	$ 2,847,488	$ 2,847,488
Federal Funds	$ 171,507	$ 83,081	$ 83,081

SECTION 23. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of items in the 1995-1999 agreement negotiated with the exclusive representative of bargaining unit 10:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 244,217	$ 148,442	$ 148,442

SECTION 24. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1995-1997 and 1997-1999 fiscal bienniums salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 10:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 170,857	$ 245,180	$ 245,180
Special Funds	$ 835	$ 49,467	$ 49,467
Federal Funds	$ -0-	$ 7,174	$ 7,174

SECTION 25. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of the 1995-1997 and 1997-1999 fiscal bienniums salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from bargaining unit 10:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 2,964	$ 6,054	$ 6,054

PART IX

SECTION 26. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 13:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 8,409,540	$ 7,150,722	$ 7,150,722
Special Funds	$ 1,667,424	$ 1,366,612	$ 1,366,612
Federal Funds	$ 2,477,955	$ 2,041,958	$ 2,041,958
Other Funds	$ 382,315	$ 313,239	$ 313,239

SECTION 27. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of items negotiated in the 1997-1999 agreement with the exclusive representative of bargaining unit 13:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 1,243,433	$ 1,111,939	$ 1,111,939
Special Funds	$ 8,408	$ 7,608	$ 7,608

SECTION 28. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from bargaining unit 13:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 2,810,315	$ 2,372,836	$ 2,372,836
Special Funds	$ 679,759	$ 565,840	$ 565,840
Federal Funds	$ 221,873	$ 187,028	$ 187,028
Other Funds	$ 232,154	$ 190,029	$ 190,029

SECTION 29. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums to fund the retroactive and continuing cost of the 1997-1999 fiscal biennium salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from bargaining unit 13:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
General Funds	$ 348,478	$ 309,336	$ 309,336

PART X

SECTION 30. Funds appropriated or authorized by each section of this Act to Program Planning, Analysis, Budgeting (BUF 101) shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of that section.

SECTION 31. Funds appropriated or authorized by each section of this Act to Administrative Director Services (JUD 201) shall be allotted by the chief justice in the respective fiscal year for the purposes of that section.

SECTION 33.[1] The sums appropriated shall be expended by the Hawaii health systems corporation for the purposes of this part.

PART XI

SECTION 34.[1] Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 35.[1] Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 1999, June 30, 2000, and June 30, 2001, of the respective fiscal years, shall lapse as of those dates.

SECTION 36.[1] This Act shall take effect upon its approval.

(Approved May 26, 1999.)

Note

1. So in original.

ACT 61 H.B. NO. 988

A Bill for an Act Making An Emergency Appropriation for State Government to Implement Year 2000 Compliance Efforts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Although Act 116, Session Laws of Hawaii 1998, appropriated a designated sum to the information processing services program for remediation of computer systems for Year 2000 compliance, a critical funding emergency exists. Additional requirements have made it necessary to create a parallel production environment to permit a phased migration of operating systems through the year 1999. The cost of establishing the second production system has depleted the department's available resources, making it impossible to provide for unanticipated application modifications, equipment, software, or services that may be required.

The purpose of this Act is to appropriate additional moneys to allow for the testing, modification, and support of the State's computer systems for Year 2000 compliance.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $1,040,000 or so much thereof as may be necessary for fiscal year 1998-1999 to be used in support of the State's Year 2000 remediation efforts.

SECTION 4. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act. With the approval of the governor, the department may delegate responsibility and transfer funds to other state agencies for purposes of this Act.

SECTION 5. All unexpended and unencumbered balances of the appropriation made by section 3 of this Act as of the close of business on June 30, 1999, shall not lapse and shall be carried over and may be expended during fiscal year 1999-2000; provided that on June 30, 2000, all unexpended and unencumbered balances shall lapse into the general fund of the State.

SECTION 6. The department of accounting and general services shall submit a report on all expenditures and encumbrances made pursuant to the State's Year 2000 remediation efforts to the legislature no later than twenty days prior to the convening of the regular session of 2000.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 26, 1999.)

ACT 62 S.B. NO. 1501

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that as long as a public school complies with the requirements that it be free to all attending students, that its admissions policies be nondiscriminatory, and that it comply with statewide performance standards, a school should otherwise be free from statutory and regulatory requirements that tend to inhibit or restrict a school's ability to make decisions relating to the provision of educational services to the students attending the school.

To nurture the ideal of more autonomous and flexible decision-making at the school level, the legislature supports the concept of new century charter schools. The legislature finds that this concept defines a new approach to education that is free of bureaucratic red tape and accommodating of the individual needs of students to allow the State to dramatically improve its educational standards for the twenty-first century. Both existing public schools and new schools may be established as new century charter schools, and these schools will allow educators to better tailor the curriculum to enhance the learning of the students.

The purpose of this Act is to increase the flexibility and autonomy at the school level by allowing existing public schools and new schools to be designated as new century charter schools. These new century charter schools shall have a local school board as a governing body, and shall operate independent educational programs from those provided by the department of education statewide.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . NEW CENTURY CHARTER SCHOOLS

§302A-A New century charter schools. All schools previously designated as student-centered schools shall be designated as new century charter schools.

§302A-B New century charter schools; establishment. (a) Up to a total of twenty-five schools may be established as new century charter schools. These new century charter schools may be established by:

(1) The creation of a new school pursuant to section 302A-C;
(2) An existing public school pursuant to subsection (b); or
(3) The creation of a new school, comprising programs or sections of existing public school populations and using existing public school facilities pursuant to section 302A-C.

(b) Any public school or schools may form a new century charter school by establishing a local school board as its governing body composed of, at a minimum, one representative from each of the following participant groups:

(1) Principals;
(2) Instructional staff members selected by the school instructional staff;
(3) Support staff selected by the support staff of the school;
(4) Parents of students attending the school selected by the parents of the school;
(5) Student body representatives selected by the students of the school; and
(6) The community at-large.

(c) The local school board shall formulate and develop a detailed implementation plan, which shall include but not be limited to the following:

(1) A description of the administrative and educational framework, and which provides for the basic protection of employees and their reasonable academic freedoms;
(2) A plan for identifying, recruiting, and selecting students to make certain that student participation is not exclusive, elitist, or segregationalist;
(3) A plan for assessing student performance that focuses upon the established state educational performance standards, has at least equivalent rigor of standards and technical quality, as well as any other specific student outcomes to be achieved, and making this plan accountable to the general public;
(4) The curriculum, instructional framework, and assessment mechanisms to be used to achieve student outcomes;
(5) A plan to hold the school, its faculty, and staff (collectively and individually) accountable in at least an equivalent manner as are other public schools throughout the State;
(6) A governance structure of the school;
(7) A facilities management plan that is consistent with the state facilities plan; provided that if the facilities management plan includes use of existing school facilities, the new century charter school shall receive authorization from the administrator responsible for the facilities; provided further that the final determination of use shall be under the discretion of the board; and
(8) Annual financial and program audits.

The detailed implementation plan shall be approved by sixty per cent of the school's existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units. Once

approved, the detailed implementation plan shall be submitted to the board for review.

(d) The board shall have thirty days to review the completed implementation plan for the proposed new century charter school to assure its compliance with subsection (c) and section 302A-D. Unless the board finds that the plan conflicts with subsection (c) or section 302A-D, the governor, the superintendent, and the board shall issue a charter designating the proposed new century charter school as a new century charter school within thirty days, and the proposed implementation plan shall be converted to a written performance contract between the school and the board. If, within thirty days after the submission of the plan, the board finds a conflict with subsection (c) or section 302A-D, it shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to resolve the conflict.

(e) The new century charter schools shall not charge tuition. The State shall afford the local school board of any new century charter school the same protections as the State affords to the board.

§302A-C New century charter schools; request for establishment and designation. (a) As an alternative to section 302A-B(b), any community or any program within an existing school may submit a letter of intent to the board for the establishment of a new century charter school.

(b) The authors of the letter of intent shall then develop a detailed implementation plan, pursuant to section 302A-B(c); provided that the plan shall also include the appointment of an interim school board, address issues of personnel management, and align any funding for the design and construction costs of building or renovating the new century charter school with the state facilities plan. The superintendent shall provide support and guidance to the community in formulating a detailed implementation plan which is compliant with sections 302A-B(c) and 302A-D. Once completed, the detailed implementation plan shall be submitted to the board for review.

(c) The board shall have sixty days to review the completed implementation plan for the proposed new century charter school to ensure its compliance with sections 302A-B(c) and 302A-D. Unless the board finds that the plan conflicts with section 302A-B(c) or 302A-D, the governor, the superintendent, and the board shall issue a charter designating the proposed new century charter school as a new century charter school within sixty days, and the proposed implementation plan shall be converted into a written performance contract between the school and the board. The interim local school board shall establish the local school board pursuant to section 302A-B(b) no later than ninety days after the governor, the superintendent, and the board have designated the school a new century charter school by charter. If, within sixty days after the submission of the plan, the board finds a conflict with section 302A-B(c) or 302A-D, it shall notify the authors of the letter of intent of the finding in writing to enable the authors of the letter of intent to appropriately amend the plan to resolve the conflict.

§302A-D New century charter schools; exemptions. Schools designated as new century charter schools shall be exempt from all applicable state laws, except those regarding:

(1) Collective bargaining under chapter 89; provided that:

(A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decision-making;

(B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items;
(C) The agreements shall be funded from the current allocation or other sources of revenue received by the new century charter school; and
(D) These agreements may differ from the master contracts;
(2) Discriminatory practices under section 378-2; and
(3) Health and safety requirements.

New century charter schools shall be exempt from the state procurement code, chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. However, where possible, the new century charter school is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the new century charter school to any other provision of chapter 103D. New century charter schools shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public.

§302A-E New century charter schools; funding. (a) New century charter schools shall receive an allocation of state general funds based upon the operational and educational funding requirements of the schools; provided that:

(1) Beginning in fiscal year 1999-2000, and every year thereafter, the auditor shall determine the appropriate allocation based on the total department general fund appropriation and per pupil expenditure for the previous year; provided that in setting the allocation, the auditor shall explicitly consider the advice of the superintendent and indicate in the final determination the manner in which that advice was accommodated;
(2) Small schools shall be given a state subsidy or small school allotment to augment the per pupil allocation given; provided that if additional federal grant moneys are received, the auditor shall determine the appropriate portion of the federal grant moneys to be used to offset the small school allotment; provided further that the federal grant moneys shall not include federal impact aid;
(3) The auditor shall take into consideration any changes to the department's budget by the legislature and any applicable collective bargaining negotiated amounts; and
(4) The allocation for self-contained special education students and for other special education students shall be adjusted appropriately to reflect the additional expenses incurred for students in these programs; provided that any increment to the per pupil allocation made in this paragraph shall not exceed that available to other public schools.

(b) All federal and other financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services are provided to the school by the department, the school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the school's allocation.

Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to

these supplementary grants, the school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used.

All additional funds that are generated by the local school board not from a supplementary grant shall be separate and apart from allotted funds may be expended at the discretion of the local school board.

(c) If, at any time, the new century charter school dissolves or is denied continuation, the State of Hawaii shall have first right, at no cost to the State, to all the assets and facilities of the new century charter school.

§302A-F New century charter schools; self-evaluation. (a) Every new century charter school shall conduct self-evaluations annually. The self-evaluation process shall include but not be limited to:

(1) The identification and adoption of benchmarks to measure and evaluate administrative and instructional programs as provided in this section;
(2) The identification of any administrative and legal barriers to meeting the benchmarks, as adopted, and recommendations for improvements and modifications to address the barriers; and
(3) The impact of any changes made upon the students of the new century charter school.

Every new century charter school shall submit a report of its self-evaluation to the board within sixty days after the completion of the school year; provided that the department shall have thirty days to respond to any recommendation regarding improvements and modifications that would directly impact the department.

(b) The board shall initiate an independent evaluation of each new century charter school four years after its establishment and every four years thereafter to assure compliance with statewide student performance standards and fiscal accountability; provided that each new century charter school established prior to July 1, 1998, shall be evaluated four years after July 1, 1998, and every four years thereafter. Upon a determination by the board that student achievement within a new century charter school does not meet the student performance standards, or that the new century charter school is not fiscally responsible, a new century charter school shall be placed on probationary status and shall have two years to bring student performance into compliance with statewide standards and improve the school's fiscal accountability. If a new century charter school fails to meet its probationary requirements, or fails to comply with any of the requirements of this section, the board, upon a two-thirds majority vote, may then deny the continuation of the new century charter school.

§302A-G New century charter schools; administrative supervision. Whenever any new century charter school is established under section 302A-B or 302A-C, the following provisions shall apply except as otherwise specifically provided by this chapter:

(1) Following consultation with the new century charter school, the board shall represent the new century charter school in communications with the governor and with the legislature;
(2) The financial requirements for state funds of the new century charter school shall be submitted through the board and included in the budget for the department;
(3) The approval of all policies and rules adopted by the new century charter school shall be preceded by an open public meeting and shall not be subject to chapter 91;
(4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under

the jurisdiction of the new century charter school shall be determined by the new century charter school and applicable personnel laws and collective bargaining agreements;

(5) Except as set forth in this section, the board or the superintendent of education shall not have the power to supervise or control the new century charter school in the exercise of its functions, duties, and powers; and

(6) Local school boards may enter into an annual business contract for centralized services to be provided by the department prior to the beginning of each school year.

§302A-H New century charter schools; mandate to support. The department, together with key representatives of the major divisions in the department, representatives from the unions, as well as individuals from the new century charter schools shall collaborate together on a system of technical assistance that will provide a baseline for success of each new century charter school. In addition, the department, through the board and its superintendent, shall provide any other information and technical assistance upon request necessary to support the establishment and expansion of new century charter schools."

SECTION 3. Section 302A-101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

""New century charter schools" means the implementation of alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management, formed under section 302A-B or 302A-C."

2. By repealing the definition of "student-centered schools":

[""Student-centered schools" means the implementation of alternative frameworks with regard to curriculum; facilities management; instructional approach; length of the school day, week, or year; and personnel management; and may include two or more schools acting jointly."]

SECTION 4. Section 302A-1114, Hawaii Revised Statutes, is amended to read as follows:

"[]§302A-1114[] Power of appointment, removal. The department, from time to time, may appoint and remove such teachers, educational officers, and other personnel as may be necessary for carrying out the purposes of sections 302A-201, 302A-301, 302A-401 to 302A-410, 302A-601, 302A-1001 to 302A-1004, 302A-1101 to [302A-1123,] 302A-1122, 302A-1301 to 302A-1305, 302A-1401 to 302A-1403, and 302A-1501 to 302A-1506, and regulate their duties, powers, and responsibilities, when not otherwise provided by law."

SECTION 5. Section 302A-1302, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1302 School-based budget flexibility. Beginning with the 1995-1997 fiscal biennium, the department shall implement school-based budget flexibility for schools, complexes, and learning support centers. The flexibility shall be limited to the school-based budgeting program EDN 100 of the department for all schools except [student-centered schools] new century charter schools defined in section 302A-101; provided that beginning in fiscal year 1998-1999, and every year

thereafter, the department shall distribute the full appropriation due to a [student-centered] new century charter school pursuant to section [302A-1123(d)] 302A-E directly to the [student-centered] new century charter school."

SECTION 6. Section 302A-1123, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 302A-1123.5, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 302A-1123.6, Hawaii Revised Statutes, is repealed.

SECTION 9. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute the appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 27, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 63 H.B. NO. 154

A Bill for an Act Relating to Public Television.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide for the orderly transfer of the licenses, assets, responsibilities, and functions of the Hawaii public broadcasting authority, also commonly known as Hawaii Public Television, to the Hawaii Public Television Foundation, a private, not-for-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The transfer is contingent upon the approval of the Federal Communications Commission. This transfer represents a significant step in the direction of a redefined relationship between the State and public television in Hawaii.

The legislature recognizes that the transfer is necessary as the result of significant reductions in state and federal funding of the Hawaii public broadcasting authority. At the instruction of the 1996 legislature, the Hawaii public broadcasting authority developed a strategic plan that was presented at the 1997 regular session. The purpose of this plan was to develop a blueprint that demonstrated how public television could make the transition to a community-based system.

The plan created a new relationship with the State to preserve the important role Hawaii Public Television plays in creating and broadcasting educational programs for the department of education, the University of Hawaii, and other educational institutions. The plan also enabled Hawaii Public Television to innovate and efficiently pursue its role in broadcasting cultural and public affairs programs that enhance the quality of life in the community.

In supporting the educational, cultural, and historical contributions of non-commercial public television programming, it remains essential to ensure the continued creative and financial health of public television in Hawaii, and its ability to operate in a rapidly changing and advancing technical environment.

The strategic plan submitted by Hawaii public broadcasting authority provided for the establishment of a foundation, initially for fundraising and eventually to operate the public television network in Hawaii. The Hawaii Public Television Foundation was established in December, 1997, with a board of directors of twenty-five community leaders, and will be prepared to assume all responsibilities of management and operation of the public television system in Hawaii, effective July 1, 2000.

SECTION 2. (a) Notwithstanding any law to the contrary, including chapter 103D, parts XI and XII, Hawaii Revised Statutes, the Hawaii public broadcasting authority shall transfer to the Hawaii Public Television Foundation on July 1, 2000, the following:

(1) All records, equipment, and other property of Hawaii Public Broadcasting Authority, including without limitation all broadcast equipment, non-broadcast equipment, machines, files, supplies, records, documents, maps, and other physical assets and personal property heretofore made, used, acquired, or held by the Hawaii public broadcasting authority;

(2) All licenses issued by the Federal Communications Commission that are held by Hawaii public broadcasting authority; and

(3)*ll* rights and obligations of Hawaii public broadcasting authority under deeds, leases, licenses, permits, loans, agreements and contracts, excluding any employment contracts or collective bargaining agreements, executed or entered into with owners of real property, independent contractors, or other broadcasting or production entities and public bodies on behalf of or by the Hawaii public broadcasting authority to the extent that such rights and obligations are transferrable.

(b) The transfers in subsection (a) shall not require the consent of any public agency except any required approvals of the Federal Communications Commission.

(c) To the extent consistent with federal law and regulations and with the agreements executed by Hawaii public broadcasting authority, the transfers contemplated by this Act are made on the express condition that the application to transfer the broadcasting licenses from Hawaii public broadcasting authority to Hawaii Public Television Foundation is approved by the Federal Communications Commission.

(d) The assets and licenses transferred to the Hawaii Public Television Foundation shall be used by the foundation throughout their terms and useful lives, for the purposes of continuing and advancing public broadcasting in Hawaii. If the Hawaii Public Television Foundation determines that any of the equipment listed on the inventory of Hawaii public broadcasting authority as of June 30, 2000, is no longer useful, the State of Hawaii shall have first right, at no cost to the State, to receive possession and ownership of the equipment, which has been determined to be no longer useful. If the Hawaii Public Television Foundation is dissolved, voluntarily or involuntarily, or discontinues public broadcasting in Hawaii, at any time, the State of Hawaii shall have first right to acquire, at no cost to the State, all of the unencumbered assets and licenses transferred to the Hawaii Public Television Foundation under this Act; provided that such assets or licenses not claimed by the State shall be transferred to a public or private entity qualified contractually to succeed the Hawaii Public Television Foundation as the public broadcasting affiliate in Hawaii.

SECTION 3. The Hawaii public broadcasting authority is granted all necessary authority to perform all acts necessary to carry out the transfers described in this Act, including the authority to convey property and assign contracts. The Hawaii

public broadcasting authority shall perform all acts necessary for a timely transfer of licenses held to the Hawaii Public Television Foundation.

SECTION 4. Notwithstanding any law to the contrary, including chapter 103D, parts XI and XII, Hawaii Revised Statutes, the executive director of Hawaii public broadcasting authority shall deliver to the officers or representative of the Hawaii Public Television Foundation all records and property within the possession of the Hawaii public broadcasting authority that relate to the assets, licenses, leases, and contracts being transferred under this Act. SECTION 5. Any and all funds remaining in the Hawaii public broadcasting authority revolving fund as of July 1, 2000, shall be transferred to the Hawaii Public Television Foundation on July 1, 2000.

SECTION 6. The Hawaii public broadcasting authority shall continue to retain and perform all responsibilities set forth in chapter 314, Hawaii Revised Statutes, until July 1, 2000.

SECTION 7. Chapter 314, Hawaii Revised Statutes, is repealed.

SECTION 8. This Act shall take effect upon its approval; except that:

(1) Section 5 shall take effect only upon the approval by the Federal Communications Commission of the transfer of Hawaii public broadcasting authority's broadcast licenses to the Hawaii Public Television Foundation; and

(2) Section 7 shall take effect on July 2, 2000; and provided further that the Federal Communications Commission approves of the transfer of Hawaii public broadcasting authority's broadcast licenses to the Hawaii Public Television Foundation.

(Approved May 28, 1999.)

ACT 64 H.B. NO. 72

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-191, Hawaii Revised Statutes, is amended by amending the definition of "qualifying campaign contribution" to read as follows:

"Qualifying campaign contribution" means [a] an aggregate monetary contribution of $100 or less, [and not more than $100 of a person's total aggregate monetary contribution.] by any person during any matching payment period. Qualifying contributions do not include loans or in-kind contributions."

SECTION 2. Section 11-203, Hawaii Revised Statutes, is amended to read as follows:

"**§11-203 Fundraisers and fundraising activities.** (a) As used in this section, "fundraiser" means any function held for the benefit of a person that is intended or designed, directly or indirectly, to raise funds for political purposes for which the price or suggested contribution for attending the function is more than $25 per person.

(b) There shall be no more than two fundraisers held for a person prior to a general or special election in which that person is either elected or defeated.[1]

(c) No fundraiser or fundraising activity shall be held unless a notice of intent to hold the function is filed by the person in charge of the function with the commission prior to the date of the function setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the affair and the method thereof.

(d) Fundraisers sponsored by a candidate for a statewide office are exempt from the $25 limit of subsection (a) and the restrictions of subsection (b), and fundraisers sponsored by a party for a political purpose for the general benefit of the party are exempt from the restrictions of subsection (b).

[(e) The following expenses incident to a fundraiser and to all other political fundraising activities held for the benefit of a candidate shall not be considered expenditures within the limitations set by section 11-209:

(1) The cost of food and beverages consumed at the function;
(2) Rent and utilities for the premises where the function is held;
(3) The amount paid for guest speakers and entertainment;
(4) Printing and postage related to a function; and
(5) All other direct costs incurred in solicitation of the fundraiser, or fundraising activity.]''

SECTION 3. Section 11-208, Hawaii Revised Statutes, is amended to read as follows:

"**§11-208 Voluntary campaign expenditure limitation.** (a) Any candidate may voluntarily agree to limit the candidate's campaign expenditures and those of the candidate's committee or committees and the candidate's party in the candidate's behalf by filing an affidavit with the campaign spending commission[; provided that a candidate may withdraw the candidate's affidavit no later than thirty days prior to a primary election. Any candidate withdrawing the candidate's affidavit shall notify all contributors during the election period, in writing, that contributions are not tax deductible].

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in section 11-209 and that the candidate is voluntarily agreeing to limit the candidate's expenditures and those made on the candidate's behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized.

(c) Affidavits in compliance with this section shall be filed by [January 31 of the year of any primary, special, or general election, or on the date set for filing the candidate's organizational report as provided in section 11-196, whichever is later.] the time of filing of nomination papers with the chief election officer or county clerk.''

SECTION 4. Section 11-209, Hawaii Revised Statutes, is amended to read as follows:

"**§11-209 Campaign expenditures; limits as to amounts.** (a) From January 1 of the year of any primary, special, or general election, the total expenditures for each election for candidates who voluntarily agree to limit their campaign expenditures [for each election], inclusive of all expenditures made or authorized by the candidate alone and all campaign treasurers and committees in the candidate's behalf, shall not exceed the following amounts expressed respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

(1) For the office of governor—$2.50;
(2) For the office of lieutenant governor—$1.40;
(3) For the office of mayor—$2.00;
(4) For the offices of state senator, state representative, county council member, and prosecuting attorney—$1.40; and
(5) For the offices of the board of education and all other offices—20 cents.

(b) A candidate or committee who has voluntarily agreed to the expenditure limits in this section and who exceeds their respective expenditure limits shall pay the full filing fee and shall notify all opponents, the chief election officer, [all contributors,] and the commission by telephone and in writing the day the expenditure limits are exceeded. All contributors shall be notified within thirty days of exceeding the expenditure limits. Notification to contributors shall include an announcement that tax deductions based on their contributions are no longer available."

SECTION 5. Section 11-217.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In the event that the Hawaii election campaign fund is close to depletion, as determined by the commission, the commission shall determine the amounts available to qualified candidates based on their order of eligibility in qualifying for public funds, as determined by the date of filing of an [affidavit] application for public funds with the commission pursuant to section [11-208;] 11-222; provided that the [affidavit] application has been accepted by the commission."

SECTION 6. Section 11-218, Hawaii Revised Statutes, is amended to read as follows:

"**§11-218 Candidate funding; amounts available.** (a) The maximum amount of public funds available to a candidate for the office of governor, lieutenant governor, or mayor in any election year shall not exceed one-fifth or twenty per cent of the total expenditure limit for each election as established for each office [above] listed in this subsection pursuant to section 11-209.

(b) For the office of state senator, state representative, county council member, and prosecuting attorney, the maximum amount of public funds available to a candidate in any election year shall be thirty per cent of the total expenditure limit for each election as established for each office listed in this subsection pursuant to section 11-209.

(c) For the board of education and all other offices, the maximum amount of public funds available to a candidate shall not exceed $100 in any election year.

(d) The total amount of public funds for a primary, special primary, or general election to which a candidate is entitled to receive under section 11-221 shall not exceed fifty per cent of the maximum amount of public funds available for the candidate's respective office. Each candidate who qualified for the maximum amount of public funding in any primary or special primary election and who is a candidate for a subsequent general election shall upon application with the commission be entitled to receive up to fifty per cent of the balance of public funds available to such candidate."

SECTION 7. Section 11-219, Hawaii Revised Statutes, is amended to read as follows:

"**§11-219 Qualifying campaign contributions; amounts.** As a condition of receiving public funds for a primary, special primary, or general election, a candi-

date shall not be unopposed in any election for which public funds are sought, and shall have filed an affidavit with the commission pursuant to section 11-208 to voluntarily limit the candidate's campaign expenditures and shall be in receipt of the following sum of qualifying campaign contributions for the candidate's respective office for each election:

(1) For the office of governor—qualifying contributions that in the aggregate, exceed $100,000;
(2) For the office of lieutenant governor—qualifying contributions that in the aggregate, exceed $50,000;
(3) For the office of mayor for each respective county:
    (A) County of Honolulu—qualifying contributions that in the aggregate, exceed $50,000;
    (B) County of Hawaii—qualifying contributions that in the aggregate, exceed $15,000;
    (C) County of Maui—qualifying contributions that in the aggregate, exceed $10,000; and
    (D) County of Kauai—qualifying contributions that in the aggregate, exceed $5,000; and
(4) For the office of prosecuting attorney for each respective county:
    (A) County of Honolulu—qualifying contributions that in the aggregate, exceed $30,000;
    (B) County of Hawaii—qualifying contributions that in the aggregate, exceed $10,000; and
    (C) County of Kauai—qualifying contributions that in the aggregate, exceed $5,000;
(5) For the office of county council—for each respective county:
    (A) County of Honolulu—qualifying contributions that in the aggregate, exceed $5,000;
    (B) County of Hawaii—qualifying contributions that in the aggregate, exceed $1,500;
    (C) County of Maui—qualifying contributions that in the aggregate, exceed $5,000; and
    (D) County of Kauai—qualifying contributions that in the aggregate, exceed $3,000;
(6) For the office of [the] state senator—qualifying contributions that, in the aggregate, exceed $2,500;
(7) For the office of state [house of] representative—qualifying contributions that, in the aggregate, exceed $1,500; and
(8) For all other offices, qualifying contributions that, in the aggregate, exceed $500."

SECTION 8. Section 11-222, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Application forms for public funds shall be adopted by the commission and shall provide for a sworn statement by the candidate that the candidate has established eligibility under section 11-220 to receive payments under section 11-217. Each application shall be accompanied by a qualifying campaign contribution statement or statements, and shall be filed with the commission no later than [sixty] thirty days after the general election. Upon approval by the commission of the application and qualifying contribution statement, the commission shall direct the comptroller to distribute matching public funds up to the maximum of the amount of public funds to which the candidate is entitled.

Public funds shall be distributed by the comptroller to each eligible candidate within [ten] twenty days from the date of the candidate's initial application with the commission."

SECTION 9. Section 11-223, Hawaii Revised Statutes, is amended to read as follows:

"**§11-223 Candidate funding; restrictions.** (a) Each candidate who accepts public campaign funds under this subpart shall be required to abide by the campaign spending limits for the candidate's respective office as set forth in section 11-209. Any candidate who exceeds the spending limits for the candidate's respective office as set forth in section 11-209 shall immediately return all of the public campaign funds the candidate has received to the Hawaii election campaign fund[; provided that any candidate who exceeds the limits by no more than one per cent shall return twenty-five per cent of the fund].

(b) Public campaign funds provided under this subpart shall only be used to:

(1) Defray campaign expenses incurred by and paid for an eligible candidate or all committees authorized by such candidate; and

(2) Repay loans, the proceeds of which were used to defray campaign expenses.

(c) No candidate or committee authorized by a candidate shall be entitled to receive any public funds under this subpart unless the candidate [and at least one other candidate for the same elective seat have] has qualified to have [their names] the candidate's name on the election ballot in the [same] election[.] for which funds are sought.

(d) In no event shall any candidate or campaign treasurer in receipt of public campaign funds transfer any portion of such funds to another candidate for any primary, special primary, special, or general election campaign.

(e) All public funds received under this subpart shall be deposited in a financial institution designated to do business in the State. No expenditures of any public funds received under this subpart shall be made except by checks drawn on such checking account. The commission may require such reports relating to the expenditure of such funds as it considers appropriate.

(f) [Upon] Each candidate, on the deadline for filing of a final report for any primary, special primary, special, or general election, [each candidate who has spent an amount below the expenditure limit set for the candidate's respective office, but who has received the maximum amount of public funds allowable for the candidate's respective office,] shall return all unexpended public funds to the Hawaii election campaign fund."

SECTION 10. Act 27, Special Session Laws of Hawaii 1995, as amended by Act 13, Session Laws of Hawaii 1996, is amended by amending section 15 to read as follows:

"SECTION 15. This Act shall take effect on July 1, 1995; provided that [on]:

(1) On June 30, 1999, this Act shall be repealed and sections 11-1, 11-2, 11-5, 11-191,[2] 11-194, 11-195, 11-216, 12-8, and 26-1, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(2) The amendments made by Act , Session Laws of Hawaii 1999, shall not be repealed when the provisions in paragraph (1) are reenacted."

SECTION 11. In printing this Act, the revisor of statutes shall insert the number of this Act in section 10.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect on June 29, 1999.

(Approved June 7, 1999.)

Notes

1. Prior to amendment "Within six months after a general or special election, however, a candidate or committee directly associated with a candidate who has a deficit may hold an additional fundraiser." appeared here.
2. Comma should be underscored.

ACT 65 H.B. NO. 20

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii's failure to adequately compensate its judges is adversely affecting the quality of justice. Insufficient compensation creates the risk that judges will leave the bench, thus depriving the public of the significant value of experienced jurists. Since 1992, ten seasoned and experienced judges have left Hawaii's bench due, in part, to the lack of adequate compensation. The legislature notes that in recent months, another two seasoned justices have announced their intention to leave the bench. The Judicial Salary Commission believes that these departures will continue until compensation is adjusted. Therefore, the legislature recognizes that an increase in judicial salaries is required in order to ensure that the most highly qualified individuals will be attracted to the state judiciary and will be able to serve and continue to serve without unreasonable economic hardship.

The purpose of this Act is to:

(1) Amend the service retirement laws to correlate years on the bench with retirement benefits; and
(2) Increase judicial salaries by 13 per cent over two years.

PART I

SECTION 2. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

"**§88-73 Service retirement.** Retirement of a member on a service retirement allowance shall be made by the board of trustees or its designee as follows:

(1) Any member who has at least five years of credited service and who has attained age fifty-five or any member who has at least twenty-five years of credited service or any member who has at least ten years of credited service, [including] which includes service as a judge[,] before July 1, 1999, an elective officer, or [the chief clerk, assistant clerk, sergeant at arms, or assistant sergeant at arms of either house of the legislature] a legislative officer, may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired. In the event of the death of a member after the date of the filing of the member's written application to retire, the designated

beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement;

(2) Any member who first earned credited service as a judge after June 30, 1999, may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired; provided that the member has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service. In the event of the death of a member after the date of the filing of the member's written application to retire, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement;

[(2)] (3) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position;

[(3)] (4) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge elected to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of average final compensation, shall be used as the effective date of retirement; provided that the elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service; [however,] provided further that upon leaving active service the elective officer or judge shall receive the retirement allowance provided for in section 88-74, together with the post retirement allowances provided for in section 88-90, which post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day; and

[(4)] (5) In the case of a class A or B member who also has prior credited service under part VII, total credited service as a class A, class B, and class C member shall be used to determine the eligibility for retirement allowance."

SECTION 3. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

"**§88-74 Allowance on service retirement.** Upon retirement from service, a member shall receive a retirement allowance as follows:

(1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and B member, excluding any credited service as [an] a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member; provided that:

(A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;

(B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;

(C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;

(D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;

(E) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer; and

(F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety [investigative] investigations staff investigator;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

(2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest;

(3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

(A) [Irrespective] For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the

actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and

[(B) For all other credited service, as provided in paragraphs (1), (2) and (4). No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraph (A), and the portion of the accumulated contributions specified in that subparagraph in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or]

(B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or

(C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or

(D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or

(4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:

(A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and

(B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(2), in addition to an annuity that is the actuarial equivalent of the

member's accumulated contributions allocable to the period of service;

[(C) Irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and]

(C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

(i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and

(ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and

(D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(d)(4) shall be multiplied by two per cent, two and one-half per cent, or one and one-quarter per cent, as applicable to the credited service earned as a class A, B, or C member, respectively. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(d)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3).''

PART II

SECTION 4. Section 602-2, Hawaii Revised Statutes, is amended to read as follows:

"**§602-2 Salary, supreme court justices.** Effective [January 1, 1989,] July 1, 1999, the salary of the chief justice of the supreme court shall be [$90,699] $98,571 a year and the salary of each associate justice of the supreme court shall be [$89,699] $97,531 a year. Effective [January 1, 1990,] July 1, 2000, the salary of the chief justice of the supreme court shall be [$94,780] $102,514 a year and the salary of each associate justice of the supreme court shall be [$93,780] $101,432 a year."

SECTION 5. Section 602-52, Hawaii Revised Statutes, is amended to read as follows:

"**§602-52 Salary.** Effective [January 1, 1989,] July 1, 1999, the salary of the chief judge of the intermediate appellate court shall be [$87,199] $94,931 a year and the salary of each associate judge shall be [$85,699] $93,371 a year. Effective [January 1, 1990,] July 1, 2000, the salary of the chief judge of the intermediate appellate court shall be [$91,280] $98,728 a year and the salary of each associate judge shall be [$89,780] $97,106 a year."

SECTION 6. Section 603-5, Hawaii Revised Statutes, is amended to read as follows:

"**§603-5 Salary of circuit court judges.** Effective [January 1, 1989,] July 1, 1999, the salary of each circuit court judge of the various circuit courts of the State shall be [$82,699] $90,251 a year. Effective [January 1, 1990,] July 1, 2000, the salary of each circuit court judge of the various circuit courts of the State shall be [$86,780] $93,861 a year."

SECTION 7. Section 604-2.5, Hawaii Revised Statutes, is amended to read as follows:

"**§604-2.5 Salary of district judges.** Effective [January 1, 1989,] July 1, 1999, the salary of each district court judge of the various district courts of the State shall be [$77,699] $85,051 a year. Effective [January 1, 1990,] July 1, 2000, the salary of each district court judge of the various district courts of the State shall be [$81,780] $88,453 a year.

Whenever the chief justice appoints a district court judge of any of the various district courts of the State to serve temporarily as a circuit court judge of any of the various circuit courts of the State, the judge shall receive per diem compensation for the days on which actual service is rendered based on the monthly rate of compensation paid to a circuit court judge. For the purpose of determining per diem compensation in this section, a month shall be deemed to consist of twenty-one days."

PART III

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of $4,121,073 or so much thereof as may be necessary for fiscal year 1999-2000 and the sum of $2,121,463 or so much thereof as may be necessary for fiscal year 2000-2001 for salaries in the judiciary. The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 1999; provided that with respect to judges who are members of the employees' retirement system and who have credited service as a judge before July 1, 1999, the members' benefits shall not be diminished nor impaired by this Act.

(Approved June 10, 1999.)

ACT 66 H.B. NO. 161

A Bill for an Act Relating to Search and Rescue Costs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are many examples of search and rescue efforts in the Hawaiian islands that were required because those being rescued chose to ignore government warnings. In addition to the high costs involved, responders risk serious injury and death in often heroic efforts to save these individuals.

The legislature further finds that government entities should claim reimbursement from persons who were warned and chose to disregard these warnings and whose actions caused or contributed to the incidents giving rise to search or rescue operations.

The purpose of this Act is to permit a government entity to recover part or all of the costs of a search and rescue operation.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
SEARCH AND RESCUE REIMBURSEMENT ACT

§ **-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Government entity" means any department, unit, or agency, of the federal, state, or county governments.

"Warning or notice" means any warning or notice issued by a government entity posted on any type of sign.

"Search and rescue expenses" include the following expenses incident to, and incurred by, a government entity or any person or private entity in a search or rescue operation:

(1) Any and all actual hourly wages, salaries, and employment-related benefits, of persons participating in a search or rescue operation;
(2) Any and all equipment costs, including rental, lease, use, repair, and/or replacement costs of equipment used in a search or rescue operation;
(3) Any and all fuel expenses incident to a search or rescue operation;
(4) Any and all other expenses relating to a search and rescue operation.

§ **-2 Reimbursement.** (a) Whenever any government entity engages in a search or rescue operation for the purpose of searching for or rescuing a person, and

incurs search and rescue expenses therein, the government entity may seek reimbursement from the following:

(1) The person on whose behalf search or rescue operations were conducted, including the person's estate, guardians, custodians, or other entity responsible for the person's safety;

(2) A person who ultimately benefited from a search or rescue operation by being rescued; or

(3) Any entity responsible for placing the person in the position of danger for which the search or rescue operation was initiated.

(b) Reimbursement under subsection (a) shall be allowed only if the need for search or rescue was caused by any act or omission by the person searched for or rescued, constituting intentional disregard for the person's safety, including, but not limited to, intentionally disregarding a warning or notice.

§ **-3 Action.** (a) Whenever a government entity seeks reimbursement of search and rescue expenses, including expenses paid or owing to private persons or entities by the government entity, in connection with a search and rescue, the government entity may bring an action in any court of competent jurisdiction; provided the reimbursement sought shall not in any case exceed the total cost incurred for the search and rescue operation.

(b) This chapter is not intended to restrict or diminish the right of any government entity to settle or compromise its rights provided in this chapter."

SECTION 3. This Act shall take effect upon its approval.

(Approved June 10, 1999.)

ACT 67 H.B. NO. 898

A Bill for an Act Relating to the Establishment of An Agricultural Water System for Upcountry Maui.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the leeward slopes of Haleakala Crater that make up the upcountry region of Maui are best suited for the commercial production of several agricultural crops that are unique or originated in this upcountry region of Maui. These crops are the Maui onion, protea, and persimmon. The legislature also finds that the region is impacted by severe droughts that cause serious interruption to the water supply over long periods of time. With increased emphasis on the development of diversified agricultural crops in the conversion of Hawaii's agriculture industry out of sugar, the opportunity is ripe to provide infrastructure improvements to this proven agricultural region. To make optimal use of this farming region, the legislature further finds that an agricultural water system is necessary for the economic and social benefit of the people of Hawaii and that such an undertaking is in the public interest.

The purpose of this Act is to establish a separate agricultural water supply and delivery system under the board of agriculture for the farms in the upcountry region of Maui.

SECTION 2. Notwithstanding any law to the contrary, the board of agriculture, in addition to any other powers granted, shall have the power to administer this Act. The board shall have the power to conduct surveys, studies, and engineering for

the construction of water facilities to adequately serve the agricultural water demand of the upcountry region of Maui. It shall also have the power to operate, maintain, and improve the system, including setting, adjusting, and collecting water tolls to defray the cost of operation and to make the system self-sufficient, except as provided in section 3 of this Act. It shall further have the power to contract with other government agencies for the construction or financing of the system.

The board of agriculture shall have the power of eminent domain to acquire the necessary easements, rights-of-way, and real property for diverting, conveying, pumping, storing, distributing, and transmitting agricultural water for agricultural uses and for such other purposes as may properly fall within the scope of its activities in creating, managing, controlling, operating, and maintaining the water system. The power of eminent domain shall be exercised in the manner and under the procedures provided by chapter 101, Hawaii Revised Statutes. It shall also have the power to adopt rules as may be necessary pursuant to chapter 91, Hawaii Revised Statutes, for the purpose of carrying out this Act.

SECTION 3. The board of agriculture shall fix a development period for the construction of the system facilities authorized by this Act, not to exceed ten years from and including the first calendar year in which agricultural water is first delivered for the purposes of this Act. During this development period, the board of agriculture shall annually adjust and fix water tolls to be charged. The cost of operation and maintenance of the system may be subsidized through legislative appropriations and through government grants, loans, or reimbursements as may be made available from government entities.

SECTION 4. The moneys from the irrigation system revolving fund pursuant to section 167-22, Hawaii Revised Statutes, shall be expended upon warrants drawn by the comptroller for expenses directly attributable to the cost of the water system facilities authorized by this Act.

Notwithstanding any provision of this Act or any other law to the contrary, it is expressly provided that, in the event that it is found possible to secure federal funds made available under any act of Congress to be expended in connection with or for the construction of this project, the board of agriculture may enter into such undertaking with the proper agencies of the federal government, agree to such conditions, and perform such other acts and terms as may be necessary as a condition to securing the funding.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 1999-2000 and $ or so much thereof as may be necessary for fiscal year 2000-2001 to carry out the purposes of this Act.

SECTION 6. The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. This Act shall take effect on July 1, 1999.

(Approved June 10, 1999.)

ACT 68

H.B. NO. 1203

A Bill for an Act Relating to the Collection of Taxes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) At the option of the director, any contract entered into under this section may provide for compensation on:

(1) A fixed price basis;
(2) An hourly rate basis with or without a fixed cap; or
(3) A contingent fee arrangement to be specified in the contract; provided that this paragraph shall not apply to auditors and accountants.

All compensation shall be payable out of the taxes recovered for the State[,] or from the debtor in accordance with the terms of, and up to the amount authorized by the contract, unless otherwise determined by the director."

SECTION 2. Section 231-26, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) At the option of the director, any contract entered into under this section may provide for compensation on:

(1) A fixed price basis;
(2) An hourly rate basis with or without a fixed cap; or
(3) A contingent fee arrangement to be specified in the contract; provided that this paragraph shall not apply to auditors and accountants.

All compensation shall be payable out of the taxes recovered for the State[,] or from the debtor in accordance with the terms of, and up to the amounts authorized by the contract, unless otherwise determined by the director."

SECTION 3. Section 443B-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This section shall not prohibit a collection agency from collecting, or attempting to collect, from a debtor, a commission authorized under a contract with the University of Hawaii pursuant to section 304-93(b)[.], or a contract with the department of taxation pursuant to sections 231-13 and 231-26."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 10, 1999.)

ACT 69

H.B. NO. 1622

A Bill for an Act Relating to Intoxicating Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Class 1. Manufacturers' licenses. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell the same at wholesale in original packages to any person who holds a license to resell the same, and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption. Under this license no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

(1) Beer;
(2) Wine;
(3) Alcohol; and
(4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer's license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a beer class manufacturer's license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a beer and wine class wholesale dealer licensee under this chapter whose wholesaling is limited to beer, other than direct ownership of a beer and wine class wholesale dealer's license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the holder of a beer and wine class wholesale dealer's license."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 10, 1999.)

ACT 70 S.B. NO. 44

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§237- Exemption for contracting or services exported out of State.** (a) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined under section 237-6) or services performed by a person engaged in a service business or calling in the State for a customer located outside the State where:

(1) The contracting or services are for resale, consumption, or use outside the State; and
(2) The value or gross income derived from the contracting or services performed would otherwise be subject to the tax imposed under this chapter on contracting or services at the highest rate.

For the purposes of this subsection, the seller or person rendering the contracting or services exported and resold, consumed, or used outside the State shall take from the customer, a certificate or an equivalent, in a form the department prescribes, certifying that the contracting or service purchased is to be otherwise resold, consumed, or used outside the State. Any customer who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or service purchased is not resold or

otherwise consumed or used outside the State, the amount of the additional tax which by reason thereof is imposed upon the seller or person rendering the contracting or service.

(b) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined in section 237-6) or services performed by a person engaged in a service business or calling in the State for a purchaser who resells all of the contracting or services for resale, consumption, or use outside the State pursuant to subsection (a). For the purposes of this subsection, the seller or person rendering the contracting or services for a purchaser who resells the contracting or services for resale, consumption, or use outside the State shall take from the purchaser, a certificate or an equivalent, in a form that the department prescribes, certifying that the contracting or services purchased is to be resold to a customer of the purchaser who has complied with subsection (a). Any purchaser who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or services purchased is not resold in its entirety to a customer of the purchaser who has complied with subsection (a), the amount of the additional tax which by reason thereof is imposed upon the seller or the person rendering the contracting or service.

(c) For purposes of this section, "service business or calling" includes all activities engaged in for other persons for a consideration that involve the rendering of a service as distinguished from the sale of tangible personal property or the production and sale of tangible personal property. "Service business or calling" includes professional services, but does not include service rendered by an employee to the employee's employer."

SECTION 2. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§238- Imposition of tax on imported services; exemptions.** (a)[1] There is hereby levied an excise tax on the value of services that are performed by an unlicensed seller at a point outside the State and imported or purchased for use in this State. The rates of the tax hereby imposed and the exemptions from the tax are as follows:

(1) If the importer or purchaser is licensed under chapter 237 and is:

(A) Engaged in a service business or calling in which the imported or purchased services become identifiable elements, excluding overhead, of the services rendered, and the gross income of the importer or purchaser is subject to the tax imposed under chapter 237 on services at the rate of one-half of one per cent; or

(B) A manufacturer importing or purchasing services that become identifiable elements, excluding overhead, of a finished or saleable product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax on the activity of the manufacturer as a wholesaler, and not a retailer;

there shall be no tax imposed on the value of the imported or purchased services; provided that if the manufacturer is also engaged in business as a retailer as classified under chapter 237, paragraph (2) shall apply to the manufacturer, but the director of taxation shall refund to the manufacturer, in the manner provided under section 231-23(c), that amount of tax that the manufacturer, to the satisfaction of the director, shall establish to have been paid by the manufacturer to the director with

respect to services that have been used by the manufacturer for the purposes stated in this paragraph.

(2) If the importer or purchaser is a person licensed under chapter 237 and is:

(A) Engaged in a service business or calling in which the imported or purchased services become identifiable elements, excluding overhead, of the services rendered, and the gross income from those services when sold by the importer or purchaser is subject to the tax imposed under chapter 237 at the highest rate; or

(B) A manufacturer importing or purchasing services that become identifiable elements, excluding overhead, of the finished or saleable manufactured product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax under chapter 237 on the activity of the manufacturer as a retailer; or

(C) A contractor importing or purchasing services that become identifiable elements, excluding overhead, of the finished work or project required, under the contract, and where the gross proceeds derived by the contractor are subject to the tax under section 237-13(3) or 237-16 as a contractor;

the tax shall be one-half of one per cent of the value of the imported or purchased services.

(3) In all other cases, the importer or purchaser is subject to the tax at the rate of four per cent on the value of the imported or purchased services."

SECTION 3. Section 237-21, Hawaii Revised Statutes, is amended to read as follows:

"**§237-21 Apportionment.** If any person, other than persons liable to the tax on manufacturers as provided by section 237-13(1), is engaged in business both within and without the State or in selling goods for delivery outside the State, and if under the Constitution or laws of the United States or section 237-29.5 [or 237-29.6] the entire gross income of such person cannot be included in the measure of this tax, there shall be apportioned to the State and included in the measure of the tax that portion of the gross income which is derived from activities within the State, to the extent that the apportionment is required by the Constitution or laws of the United States or section 237-29.5 [or 237-29.6]. In the case of a tax upon the production of property in the State the apportionment shall be determined as in the case of the tax on manufacturers. In other cases, if and to the extent that the apportionment cannot be accurately made by separate accounting methods, there shall be apportioned to the State and included in the measure of this tax that proportion of the total gross income, so requiring apportionment, which the cost of doing business within the State, applicable to the gross income, bears to the cost of doing business both within and without the State, applicable to the gross income."

SECTION 4. Section 238-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read as follows:

"<u>"Foreign customer" means a nonresident person who:</u>

<u>(1) Is not subject to chapter 237;</u>

<u>(2) Has not been physically present in the State for more than thirty days in the six months prior to entering into a written exported contracting or</u>

services agreement with a person licensed under chapter 237 engaged in contracting (as defined in section 237-6) or a service business or calling; and

(3) Is the sole recipient of the exported contracting or services provided through a person in Hawaii engaged in contracting or a service business or calling and licensed under chapter 237.

"Overhead" means continuous or general costs occurring in the normal course of a business, including but not limited to costs for labor, rent, taxes, royalties, interest, discounts paid, insurance, lighting, heating, cooling, accounting, legal fees, equipment and facilities, telephone systems, depreciation, and amortization.

"Service business or calling" includes all activities engaged in for other persons for a consideration that involve the rendering of a service as distinguished from the sale of tangible personal property or the production and sale of tangible property. "Service business or calling" includes professional services, but does not include services rendered by an employee to the employee's employer."

2. By amending the definitions of "price", "purchase" and "sale", "purchaser", "representation", "seller", and "use" to read:

"Price" means the total amount for which tangible personal property [is] or services are purchased, valued in money, whether paid in money or otherwise, and wheresoever paid[,]; provided that cash discounts allowed and taken on sales shall not be included.

"Purchase" and "sale" [mean and refer to] means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means, wheresoever consummated, of tangible personal property or services for a consideration.

"Purchaser" means any person purchasing property or services and "importer" means any person importing property[;] or services; provided that the terms "purchaser" and "importer" shall not include the State, its political subdivisions, or wholly owned agencies or instrumentalities of the State or a political subdivision; or the United States, its wholly owned agencies or instrumentalities, or any person immune from the tax imposed by this chapter under the Constitution and laws of the United States but the terms shall include national banks.

"Representation" refers to any or all of the following:

(1) A seller being present in the State;

(2) A seller having in the State a salesperson, commission agent, manufacturer's representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property or services for use or consumption in the State, by procuring orders for the sales, making collections or deliveries, or otherwise; and

(3) A seller having in the State a person upon whom process directed to the seller from the courts of the State may be served, including the director of commerce and consumer affairs and the deputy director in the cases provided in section 415-14.

"Seller" means any person engaged in the business of selling tangible personal property[,] or services, wheresoever engaged, but does not include the United States or its wholly owned agencies or instrumentalities other than national banks, the State or a political subdivision thereof, or wholly owned agencies or instrumentalities of the State or a political subdivision.

"Use" (and any nounal, verbal, [adjective,] adjectival, adverbial, and other equivalent form of the term) herein used interchangeably means any use, whether the use is of such nature as to cause the property or services to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, and shall include the exercise of any right or power over tangible or intangible personal

property incident to the ownership of that property, but the term "use" shall not include:

(1) Temporary use of property, not of a perishable or quickly consumable nature, where the property is imported into the State for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in the State (as for example without limiting the generality of the foregoing language:
   (A) [in] In the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, the equipment out of the State upon completing the contract;
   (B) [in] In the case of moving picture films imported for use in theaters in the State with intent or under contract to transport the same out of the State after completion of such use; and
   (C) [in] In the case of a transient visitor importing an automobile or other belongings into the State to be used by the transient visitor while therein but which are to be used and are removed upon the transient visitor's departure from the State);

(2) Use by the taxpayer of property acquired by the taxpayer solely by way of gift;

(3) Use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without trial;

(4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels;

(5) The use or keeping for use of household goods, personal effects, and private automobiles imported into the State for nonbusiness use by a person who:
   (A) [acquired] Acquired them in another state, territory, district, or country[,];
   (B) [at] At the time of the acquisition was a bona fide resident of another state, territory, district, or country[,];
   (C) [acquired] Acquired the property for use outside the State[,]; and
   (D) [made] Made actual and substantial use thereof outside this State;
   provided that as to an article acquired less than three months prior to the time of its importation into the State it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in the State and that its use outside the State was not actual and substantial;

(6) The leasing or renting of any aircraft or the keeping of any aircraft solely for leasing or renting to lessees or renters using the aircraft for commercial transportation of passengers and goods;

(7) The use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the State as a public utility as defined in chapter 269; [and]

(8) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 which are used for aircraft service and maintenance, or the construction of an aircraft service and maintenance facility as those terms are defined in section 237-24.9[.]; and

(9) The use of services imported for resale to a foreign customer located outside the State to the extent the services are resold, consumed, or used by that foreign customer outside the State pursuant to section 237-(a).

With regard to purchases made and distributed under the authority of chapter 421, a cooperative association shall be deemed the user thereof."

SECTION 5. Section 238-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), (c), and (d) to read as follows:

"(a) The tax imposed by this chapter shall not apply to any property[,] or services, or to any use of the property[,] or services, which cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which the State is without power to impose the tax.

Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978, under the provisions of the Constitution of the United States or an act of the Congress of the United States to persons or common carriers engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter.

(b) The tax imposed by this chapter shall not apply to any use of property or services the transfer of which property or services to, or the acquisition of which by, the person so using the same, has actually been or actually is taxed under chapter 237.

(c) The tax imposed by this chapter shall be paid only once upon or in respect of the same property[;] or services; provided that nothing in this chapter contained shall be construed to exempt any property or services or the use thereof from taxation under any other law of the State.

(d) The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided herein; provided that if it be finally held by any court of competent jurisdiction, that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property or services or the use thereof, then this chapter shall be deemed not to apply to the property or services and the use thereof under such specific circumstances, but such other laws shall be given full effect with respect to the property or services and use."

2. By amending subsections (i) and (j) to read as follows:

"(i) Each taxpayer liable for the tax imposed by this chapter on tangible personal property or services shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the taxpayer with respect to the same transaction and property or services to another state and any subdivision thereof, but such credit shall not exceed the amount of the use tax imposed under this chapter on account of the transaction and property[.] or services. The director of taxation may require the taxpayer to produce the necessary receipts or vouchers indicating the payment of the sales or use tax to another state or subdivision as a condition for the allowance of the credit.

(j) The tax imposed by this chapter shall not apply to any use of property or services exempted by section 237-26 or section 237-29."

SECTION 6. Section 238-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) On or before the last day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property or services or the use thereof, shall file a return with the assessor of the taxation district in which the property was held or the services were received when the tax first became payable, or with the director of taxation at Honolulu, setting forth a description of the property or services and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by rule shall require, and the purchase price or

value thereof as the case may be. The return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 238-2 or 238- upon the price or value so returned. Any tax remaining unpaid after the last day following the end of the calendar month during which the tax first became payable shall become delinquent; provided that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with section 238-6, shall be sufficient to relieve the taxpayer from further liability for the tax to which the receipt may refer, or for the return thereof."

SECTION 7. Section 238-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For purposes of the taxes due under sections 238-2(3) [and], 238-2.5, and 238- , every seller having in the State, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of the seller's having or not having qualified to do business in the State) shall, if the seller makes sales of property or services for use in the State (whether or not the sales are made in the State), collect from the purchaser the taxes imposed by sections 238-2(3) [and], 238-2.5, and 238- , on the use of the property or services so sold by the seller. The collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director of taxation upon the application of the seller, and the seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 286-50."

SECTION 8. Section 238-9, Hawaii Revised Statutes, is amended to read as follows:

"**§238-9 Records.** Every person who is engaged in any business in the State and who is required under this chapter to make returns, shall keep in the English language in the State and preserve for a period of three years, books of account or other records in sufficient detail to enable the director of taxation, as far as reasonably practicable, to determine whether or not any taxes imposed by this chapter are payable in respect of the property or services concerned, and if so payable, the amount thereof."

SECTION 9. Section 237-29.6, Hawaii Revised Statutes, is repealed.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 11. This Act shall take effect on January 1, 2000; provided that sections 1 and 9 of this Act shall apply to gross income and gross proceeds received after December 31, 1999, and sections 2, 4, 5, 6, 7, and 8 of this Act shall apply to all taxes accruing after December 31, 1999.

(Approved June 10, 1999.)

Notes

1. No subsection (b).
2. Edited pursuant to HRS §23G-16.5.

ACT 71

S.B. NO. 638

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In the past, Hawaii's agricultural goods-dominated economy was not severely burdened because of the reduced general excise tax rate on intermediary sale of goods. However, Hawaii has moved from an agricultural goods to a service-dominated economy. Because the general excise tax does not allow for the intermediary sale of services, the pyramiding effect of the general excise tax has become a large burden on business and the public.

The pyramiding effect of the general excise tax and the use tax significantly increases the cost of goods and services to consumers. The current law allows a reduced rate of one-half of one per cent on the sale of tangible personal property for resale and for limited intermediary sales but this is not enough. The Hawaii courts have narrowly construed the types of sales that qualify for intermediary sales of services, so to promote fairness and equality with wholesale goods, the legislature finds that the taxation of wholesale sales of services should be treated similarly to the taxation of wholesale sales of goods.

The purpose of this Act is to expand the treatment of intermediary sales of services by treating all intermediary services as wholesale sales.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§237- Application of sections 237-4(a)(8), 237-4(a)(10), and 237-13(6)(A).** (a) Sections 237-4(a)(8), 237-4(a)(10), and 237-13(6)(A) to the contrary notwithstanding, instead of the tax levied under sections 237-4 and 237-13(6)(A) at one-half of one per cent, during the period January 1, 2000, to December 31, 2005, the tax shall be as follows:

(1) In calendar year 2000, 3.5 per cent;
(2) In calendar year 2001, 3.0 per cent;
(3) In calendar year 2002, 2.5 per cent;
(4) In calendar year 2003, 2.0 per cent;
(5) In calendar year 2004, 1.5 per cent;
(6) In calendar year 2005, 1.0 per cent; and
(7) In calendar year 2006 and thereafter, 0.5 per cent.

(b) The department shall have the authority to implement the tax rate changes in subsection (a) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes."

SECTION 3. Section 237-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Overhead" means continuous or general costs occurring in the normal course of a business, including but not limited to costs for labor, rent, taxes, royalties, interest, discounts paid, insurance, lighting, heating, cooling, accounting, legal fees, equipment and facilities, telephone systems, depreciation, and amortization.</u>"

SECTION 4. Section 237-4, Hawaii Revised Statutes, is amended to read as follows:

"**§237-4 "Wholesaler", "jobber", defined.** (a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:

(1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;

(2) Sales to a licensed manufacturer of material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;

(3) Sales to a licensed producer or cooperative association of materials or commodities which are to be incorporated by the producer or by the cooperative association into a finished or saleable product which is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities which are sold by the producer or by the cooperative association;

(4) Sales to a licensed contractor, of material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses;

(5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

(6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);

(7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of

seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);

(8) Sales of tangible personal property [to]:

(A) To a licensed [person] seller engaged in [the] a service business[;] or calling; provided that [(A) the]:

(i) The property is not consumed or incidental to the performance of the services; [(B) there]

(ii) There is a resale of the article at the retail rate of four per cent; and [(C) the]

(iii) The resale of the article is separately charged or billed by the person rendering the services; and

(B) Where:

(i) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling or upon the order or request of a person, subject to tax under section 237D-2, for the purpose of furnishing transient accommodations;

(ii) The property becomes or is used as an identifiable element of the service rendered; and

(iii) The cost of the property does not constitute overhead to the licensed seller;

the sale shall be subject to section 237- .

Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). Subparagraph (A) shall be repealed on January 1, 2006.

(9) Sales to a licensed leasing company of capital goods which have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others[. Capital goods means goods which have a depreciable life and which are purchased by the leasing company for lease to its customers.]; and

(10) Sales of services to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

(ii) In the context of a service-to-goods transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, preparing, or acquiring tangible personal property to be sold;

(iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor in executing a contract; or

(iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;

(B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations; and

(C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations.

Sales subject to this paragraph shall be subject to section 237- .

(b) If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service which buys and maintains at the person's place of business a stock or lines of merchandise which the person distributes; and which, through salespersons, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter."

SECTION 5. Section 237-7, Hawaii Revised Statutes, is amended to read as follows:

"**§237-7 "Service business or calling", defined.** "Service business or calling" includes all activities engaged in for other persons for a consideration which involve the rendering of a service, including professional services, as distinguished from the sale of tangible property or the production and sale of tangible property. "Service business or calling" does not include the services rendered by an employee to the employee's employer."

SECTION 6. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

"**§237-13 Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

(1) Tax on manufacturers.

(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared, for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person

compounding, preparing, or printing them, multiplied by one-half of one per cent.

(B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.

(C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department of taxation shall determine the basis for assessment, as provided by this paragraph, as follows:

(i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products[.];

(ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values[.];[1]

(iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce[.]; and

(iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.

(2) Tax on business of selling tangible personal property; producing.

(A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and col-

lected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business and provided that insofar as the sales of tangible personal property is a wholesale sale under section 237-4(a)(8)(B) the sale shall be subject to section 237- . Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).

(B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.

(C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.

(D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; except that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax

imposed in this chapter for the privilege of producing or selling those products.

(E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.

(F) The department, by rule, may provide that a seller may take from the purchaser of tangible personal property a certificate, in a form [as] prescribed by the department [shall prescribe], certifying that the sale is a sale at wholesale[. If the certificate is so provided for by rule of the department:]; provided that:

(i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, [if the sale in fact is not at wholesale,] the amount of the additional tax [which by reason thereof] that is imposed upon the seller[;] whenever the sale in fact is not at wholesale; and

(ii) The absence of a certificate[, unless the sales of the business are exclusively at wholesale,] in itself shall give rise to the presumption that the sale is not at wholesale[.] unless the sales of the business are exclusively at wholesale.

(3) Tax upon contractors.

(A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.

(B) In computing the tax levied under this paragraph or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:

(i) Another taxpayer who is a contractor, as defined in section 237-6;

(ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or

(iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

but any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

(C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:

(i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and

(ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the

gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.

(D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements it was, and for the period of at least one year after completion of the building, structure, or other improvements, it continued to be the person's purpose to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph [(10);] (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

(4) Tax upon theaters, amusements, radio broadcasting stations, etc. Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business.

(5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.

(6) Tax on service business.

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business[; provided that

where], and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. Sales subject to this subparagraph shall be subject to section 237- .

(B) The department, by rule, may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.

(C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent; [and provided that where] Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.

(D) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.

(7) Tax on insurance solicitors and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to .15 per cent of the commissions due to that activity.

[(8) Professions. Upon every person engaging or continuing within the State in the practice of a profession, including those expounding the religious doctrines of any church, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income on the practice or exposition.

(9)] (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received[,]; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

[(10)] (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 7. Section 237-16, Hawaii Revised Statutes, is amended to read as follows:

"**§237-16 Tax on certain retailing.** (a) This section relates to certain retailing in the State as follows:

(1) This section relates to the sale of tangible personal property, for consumption or use by the purchaser and not for resale, the renting of tangible personal property, and the rendering of services by one engaged in a service business or calling, as defined, to a person who is not purchasing the services for resale, but does not relate to the sale or rental of tangible personal property or the rendering of services to the State, its political subdivisions, or agencies or instrumentalities of the State or a political subdivision, or to the United States or its agencies or instrumentalities (other than national banks), or to a corporation, organization, or other person designated in section 237-23 who is not subject to the tax imposed by this chapter, or to a person licensed under this chapter in connection with the person's business.

(2) This section relates to the business of a contractor, as defined, but does not relate to contracting with, or any gross income or proceeds of a subcontractor if the principal contract is with the State, its political subdivisions, or agencies or instrumentalities of the State or a political subdivision, or with the United States or its agencies or instrumentalities (other than national banks), or with a person designated in section 237-23 who is not subject to the tax imposed by this chapter, or with a person licensed under this chapter in connection with the person's business.

(3) This section relates to furnishing of transient accommodations in a hotel, apartment hotel, or other place in which lodgings are regularly

furnished to transients for a consideration which includes the rendering of services.

(b) There is hereby levied, and shall be assessed and collected annually, a privilege tax against persons engaging or continuing within the State in the retailing to which this section relates, on account of such retailing activities, as set forth in subsection (a), equal to four per cent of the gross proceeds of sale or gross income received or derived from such retailing. Persons on whom a tax is imposed by this section hereinafter are called "retailers".

(c) No retailer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this section is not considered as an element in the price to the consumer. Any person violating this subsection shall be fined not more than $50 for each offense.

(d) This section shall not cause the tax upon a taxpayer, with respect to any item of the taxpayer's gross income, to exceed four per cent.

(e) This section shall not apply to:

(1) Sales of tangible personal property treated as a wholesale sale under section 237-4(a)(8)(B) to a licensed seller engaged in a service business or calling or a person furnishing transient accommodations; or

(2) Sales of services treated as a wholesale sale under section 237-4(a)(10) to a licensed seller engaged in a business or calling, a contractor as defined in section 237-6, or a person furnishing transient accommodations."

SECTION 8. Section 238-2, Hawaii Revised Statutes, is amended to read as follows:

"**§238-2 Imposition of tax; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property which is imported, or purchased from an unlicensed seller, for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

(1) If the importer or purchaser is licensed under chapter 237 and is:

(A) [a] A wholesaler or jobber importing or purchasing for purposes of resale[,]; or

(B) [a] A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer,

there shall be no tax[,]; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or manufacturer shall, to the satisfaction of the director, establish to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property which has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph[.];

(2) If the importer or purchaser is licensed under chapter 237 and is:

(A) [a] A retailer or other person importing or purchasing for purposes of resale, not exempted by paragraph (1)[, or];

(B) [a] A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail[, or];

(C) [a] A contractor importing or purchasing material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses[,]; or

(D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section 237-4(a)(8) had the seller of the property been subject to the tax in chapter 237,

the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property[.]; and

(3) In all other cases, four per cent of the value of the property."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval and shall apply to gross income or gross proceeds received after December 31, 1999; provided that section 8 of this Act shall apply to amounts paid or incurred after December 31, 1999.

(Approved June 10, 1999.)

Note

1. Semicolon should be underscored.

ACT 72 S.B. NO. 1147

A Bill for an Act Relating to the Hawaii Workforce Development Council.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to comply with the provisions of Public Law No. 105-220, the Workforce Investment Act of 1998, passed by Congress and signed by the President in August 1998. Act 346, Session Laws of Hawaii 1997, consolidated employment and training advisory bodies into a workforce development council. The council was established and constituted according to

the membership provisions of Act 346. It is the intent of the legislature that the council fulfill the obligations of any federally-mandated workforce council as well as its duties and responsibilities.

SECTION 2. Chapter 202, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"CHAPTER 202
[EMPLOYMENT AND HUMAN RESOURCES] HAWAII WORKFORCE DEVELOPMENT COUNCIL"

SECTION 3. Section 202-1, Hawaii Revised Statutes, is amended to read as follows:

"**§202-1 Council; appointment; tenure.** The advisory commission on employment and human resources is hereby constituted as the workforce development council. The council shall also fulfill the functions of the state workforce investment board for purposes of the federal Workforce Investment Act of 1998, Public Law No. 105-220.

The council members shall be appointed for four-year staggered terms as provided for in section 26-34. The governor shall appoint the chairperson of the council. The council shall be composed of [seventeen] twenty-nine members. The members shall be selected on the basis of their interest in and knowledge of workforce development programs in the State and how they can support economic development. The council shall be composed of the following representatives of which the majority shall be from the private sector:

(1) The directors of labor and industrial relations, human services, and business, economic development, and tourism; the superintendent of education; and the president of the University of Hawaii[;], as ex officio voting members;
(2) [Ten] Fifteen private sector representatives from business, [labor, and] including at least one member from each of the four county workforce development boards; [and]
(3) [Two representatives from community-based organizations including one] One representative from a community-based native Hawaiian organization that operates workforce development programs[.];
(4) Two representatives from labor;
(5) Four members of the legislature, two from each house, appointed by the appropriate presiding officer of each house; and
(6) Two mayors or their representatives.

The members shall serve without compensation but shall be entitled to travel expenses when actually engaged in business relating to the work of the council."

SECTION 4. Section 202-2, Hawaii Revised Statutes, is amended to read as follows:

"**§202-2 Duties of council.** The workforce development council shall:

(1) Prepare and update periodically a comprehensive state plan for workforce development with measurable outcomes;
(2) Review and assess the coordination between the State's workforce development programs, including programs of the federal government operating in the State, and economic development and diversification; and consider:

(A) The State's employment and training requirements and resources;
(B) Practices of employers and unions that impede or facilitate the mobility of workers; and
(C) The special problems of untrained and inexperienced youth, immigrants, persons with disabilities, welfare clients, single parents, disadvantaged minorities, and other groups facing barriers in the labor force;

(3) Serve as an information clearinghouse for all workforce development programs in the State, including workforce training and education programs;

(4) Analyze and interpret workforce information, particularly changes which are likely to occur during the next ten years; the specific industries, occupations, and geographic areas which are most likely to be involved; and the social and economic effects of these developments on the State's economy, labor force, communities, families, social structure, and human values;

(5) Define those areas of unmet workforce and economic development needs and describe how private and public agencies can coordinate their efforts and collaborate with each other to address those needs;

(6) Recommend to the governor and the legislature, state policies and funding priorities based on local community input that it believes should be adopted by the state government in meeting its workforce development responsibilities to:
(A) Establish a workforce development system in the State in which resources are pooled and programs are coordinated and streamlined;
(B) Encourage a program of useful research into the State's workforce requirements, development, and utilization; and
(C) Support recommended workforce policies that promote economic development, diversification, and well-being of the people in this State;
provided that the duties and responsibilities of the workforce development council shall not impinge on the constitutional and statutory authority of the board of regents and the board of education, and the statutory authority of the state board for vocational education;

(7) Create public awareness and understanding of the State's workforce development plans, policies, programs, and activities, and promoting them as economic investments;

(8) Submit reports of its activities and recommendations to the governor and the legislature at least once a year;

(9) Evaluate the state workforce development plan in terms of how its purposes, goals, and objectives have been carried out throughout the State;

(10) Provide technical assistance to local workforce development boards and other similar organizations; [and]

(11) Carry out required functions and duties related to workforce development of any advisory body required or made optional by federal legislation, including the Job Training Partnership Act of 1982, as amended, and the Wagner-Peyser Act of 1933, as amended[.];

(12) In accordance with the federal Workforce Investment Act of 1998, Public Law No. 105-220, assist the governor in the following functions:

(A) The development of the State's plan for the use of federal workforce investment funds, which is required under Public Law No. 105-220;

(B) The development and continuous improvement of the statewide and local workforce investment systems described in subtitle B of Public Law No. 105-220, and the one-stop delivery systems described in section 134(c) of Public Law No. 105-220, including:

(i) The development of linkages referred to in Public Law No. 105-220, to assure coordination and non-duplication among the programs and activities in section 121(b) of Public Law No. 105-220; and

(ii) The review of plans prepared by local workforce investment boards for the use of federal workforce investment funds which is required under Public Law No. 105-220;

(C) Commenting at least once annually on the measures taken pursuant to section 122(c)(16) of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Public Law No. 105-332;

(D) The designation of local areas as required in section 116 of Public Law No. 105-220;

(E) The development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas as permitted under sections 128(b)(3)(B)(i) and 133(b)(3)(B)(i) of Public Law No. 105-220;

(F) The development and continuous improvement of comprehensive state performance measures, including state-adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State as required under section 136(b)(1) of Public Law No. 105-220;

(G) The preparation of the annual report to the United States Secretary of Labor described in section 136(d)(1) of Public Law No. 105-220;

(H) The development of the statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and

(I) The development of an application for an incentive grant under section 503 of Public Law No. 105-220;

and

(13) Act as the designated State entity to conduct activities relating to occupational and employment information for vocational and technical education programs in compliance with section 118 the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Public Law No. 105-332."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1999.

(Approved June 10, 1999.)

ACT 73 S.B. NO. 1270

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§846- Employees of private schools; criminal history record checks.** (a) Private schools may develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or are seeking employment in positions which place them in close proximity to children. These procedures shall include criminal history record checks. For the purposes of this section, "criminal history record check" means an examination or search for evidence of an individual's criminal history by means of a criminal history record check conducted by the Hawaii criminal justice data center; provided that the Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed at the request of a private school.

(b) Except as otherwise specified, any person who is employed or seeks employment with a private school in a position which necessitates close proximity to children may be required to provide to the private school a sworn statement indicating whether or not the person has ever been convicted of an offense for which incarceration is a sentencing option, and the details of the offense. Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the private school for the purpose of determining whether or not a person is suitable for working in close proximity to children. All decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) Private schools may refuse to employ or may terminate the employment of an employee or applicant if the person has been convicted of an offense for which incarceration is a sentencing option, and if the private school finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. This refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding."

SECTION 2. Section 846-43, Hawaii Revised Statutes, is amended to read as follows:

"**§846-43 Employees of the department of education,[1] [and] the counties[;], and teacher trainees in any public school; criminal history checks.** (a) The department of education[,] and the counties[, and respective private schools, may] shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed [or are], seeking employment, or seeking to serve as teacher trainees in any public [or private schools] school, or who are employed or seeking employment in any county in positions which place them in close proximity to children. These procedures shall include but not be limited to criminal history record checks. For the purposes of this section, "criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

(1) A search [for] of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files and, if found, an analysis and any other information available pertaining thereto; and

(2) A criminal history record check conducted by the Hawaii criminal justice data center;

provided that the Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed [for private schools and] for Federal Bureau of Investigation criminal history record checks.

(b) Except as otherwise specified, any person who is employed or seeks employment with a public [or private] school, or as a teacher trainee in any public school, or who is employed or seeks employment with any county in a position [which] that necessitates close proximity to children [may] shall be required to provide to the employer or prospective employer:

(1) A sworn statement indicating whether or not the person has ever been convicted of [a crime (other than a traffic violation involving a fine of $50 or less)] an offense for which incarceration is a sentencing option, and the details thereof;

(2) Written consent for the employer to conduct a criminal history record check as provided in subsection (a) and to obtain other information for verification; and

(3) Permission to be fingerprinted for the purpose of the Federal Bureau of Investigation criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether or not a person is suitable for working in close proximity to children. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The employer or prospective employer may refuse to employ, may refuse to issue a teaching or other educational certificate to, may revoke the teaching or other educational certificate of, may refuse to allow or continue to allow teacher training, or may terminate the employment of any employee or applicant if the person has been convicted of [a crime, other than a minor traffic offense involving a fine of $50 or less,] an offense for which incarceration is a sentencing option, and if the employer or prospective employer finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. Such refusal, revocation, or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91.

(d) This section shall not be used by the department of education to secure criminal history record checks on persons who have been employed continuously by the department on a salaried basis prior to July 1, 1990.

(e) This section shall not be used by a county to secure criminal history record checks on persons who have been employed continuously on a salaried basis prior to June 1, 1998.

(f) For the [purposes] purpose of this section, "close proximity to children" as applied to the counties, applies to programs and services for recreation or child care, or both.

(g) For the purpose of this section, notwithstanding any other law to the contrary, the department of education[,] and the counties[, and private schools] shall be exempt from section 831-3.1 and need not conduct its investigations, notifications, or hearings in accordance with chapter 91."

SECTION 3. Statutory material to be repealed is bracketed.[2] New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 10, 1999.)

Notes

1. Should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 74 S.B. NO. 1307

A Bill for an Act Relating to School Performance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the only states which have experienced significant increases in student achievement are those that implement comprehensive accountability systems that hold all parties accountable for performance in appropriate ways. Contrary to the critics, Hawaii's public schools are not the worst in the nation. However, they are not the best either and the legislature takes no comfort in the fact that Hawaii's schools are average. Hawaii's education system needs to improve over its past performance. Over the next several years, public schools need to develop ways to measure and improve student, teacher, and system performance.

The purpose of this Act is to require the establishment of a comprehensive accountability system that will identify the roles and responsibilities of all partners to the education process, identify means of assessing performance, and invoke appropriate action based upon that performance. This comprehensive accountability system includes programs which provide for student and school assessments.

SECTION 2. Section 302A-1004, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§302A-1004[]] Educational assessment and accountability; annual reports.** (a) The department shall establish a comprehensive system of educational accountability to motivate and support the improved performance of students and the education system. This accountability system shall:

(1) Link authority and adequate resources to responsibility;
(2) Define clear roles for all parties and lines of responsibility and mutual obligation;
(3) Involve fair and adequate assessment against agreed upon goals;
(4) Invoke appropriate actions (assistance, rewards, or sanctions) for observed performance;
(5) Involve a student assessment program that is explicitly aligned with the Hawaii content and performance standards and embodies high and rigorous expectations for the attainment of all students; and
(6) Involve a comprehensive school profile or report card for each school, which shall include, but not be limited to, student performance measures, school attendance, drop-out rates, and parental involvement. These reports shall be made available annually to the board, the governor, the legislature, the parents, and the general public.

Beginning with the 2001-2002 school year, the department shall submit to the legislature, the governor, and the board of education at least twenty days prior to the convening of each regular legislative session a report of the specifics of the

design of the comprehensive accountability system, as well as the fiscal requirements and legislative actions necessary to create the accountability system.

[(a)] (b) The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each regular legislative session, an educational status report that includes but is not limited to the following:

(1) Results of school-by-school assessments of educational outcomes, including reference to such student performance standards and school-by-school assessment models as may be developed by the commission on performance standards and adopted by the board[;]. This paragraph is repealed on June 30, 2001;
(2) Summaries of school improvement plans;
(3) Summary descriptions of the demographic makeup of the schools, with indications of the range of these conditions among schools within Hawaii;
(4) Comparisons of conditions affecting Hawaii's schools with the conditions of schools in other states; and
(5) Other such assessments as may be deemed appropriate by the board.

[(b)] (c) The department shall provide electronic access to computer-based financial management, student information, and other information systems to the legislature and the auditor. The auditor shall submit to the legislature and the governor, at least twenty days prior to the convening of each legislative session, a fiscal accountability report that includes but is not limited to the following:

(1) The financial analysis of expenditures by the department with respect to the following areas:
    (A) Administration;
    (B) Facilities and operations;
    (C) Teacher support and development;
    (D) Pupil support;
    (E) Instructional support; and
    (F) Classroom instruction; and
(2) The measures of accuracy, efficiency, and productivity of the department, districts, and schools in delivering resources to the classroom and the student."

SECTION 3. The department of education shall submit a report on the findings and recommendations of the design of the comprehensive accountability system referred to in section 2 of this Act, to the legislature, and to the governor, at least twenty days prior to the convening of the regular legislative session of 2000. This report shall include, but not be limited to, the essential elements of the design, a timeline for its implementation, the legislative actions necessary to enable implementation, as well as a fiscal note describing resources necessary to execute the designs. The department of education shall submit a report on the status of the implementation of the comprehensive accountability system to the legislature, and to the governor, at least twenty days prior to the convening of the regular legislative session of 2001.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 10, 1999.)

ACT 75

S.B. NO. 1157

A Bill for an Act Relating to the State Librarian.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 312-2.1, Hawaii Revised Statutes, is amended to read as follows:

"**§312-2.1 Appointment of state librarian; duties; salary.** (a) The state librarian shall be appointed by the board of education, without regard to chapters 76 and 77, [shall serve at the pleasure of the board,] shall be under the direction of the board, [and] shall be responsible for the operation, planning, programming, and budgeting of all community/school and public libraries within the State[.], and may be removed by a majority vote of its members. The state librarian may be appointed:

(1) Without regard to the state residency provisions of section 78-1(b); and

(2) For a term of up to four years.

(b) The salary of the state librarian shall be [set by the board of education. Effective January 1, 1989, and January 1, 1990, the salary shall be not more than $81,629 and] $85,302 a year[, respectively]."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved June 17, 1999.)

ACT 76

H.B. NO. 634

A Bill for an Act Establishing a Commission to Celebrate the One-Hundredth Anniversary of the Arrival of the Puerto Ricans to Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that since the arrival of the first Puerto Ricans in Hawaii on December 23, 1900, the Puerto Rican people have contributed significantly to all phases of Hawaii's development. The rich culture and proud heritage of the Puerto Rican people have been and continue to be positive influences upon life in Hawaii. Recognition of the contributions of the Puerto Rican people and their culture is important to promoting and maintaining cognizance of Hawaii's diverse and multicultural society. The year 2000 will mark the centennial anniversary of the arrival of the Puerto Rican people in Hawaii, and a celebration to commemorate their arrival and subsequent achievements in Hawaii is appropriate.

The purpose of this Act is to provide for the celebration of the centennial anniversary of the Puerto Rican people in Hawaii.

SECTION 2. **Creation of the Puerto Rican centennial celebration commission.** There is established a temporary commission to be known as the Puerto Rican centennial celebration commission which shall have charge of all arrangements for the commemoration of the centennial anniversary of the arrival of the first Puerto Ricans to Hawaii. The commission shall be placed within the office of the

governor for administrative purposes and shall cease to operate after December 23, 2001.

SECTION 3. **Membership, compensation.** The commission shall consist of fifteen members to be appointed by the governor without regard to section 26-34, Hawaii Revised Statutes. There shall be a member from the Puerto Rican Heritage Society of Hawaii, the United Puerto Rican Association of Hawaii, Inc., the Maui Puerto Rican Association, the Kohala Puerto Rican Association, and the Kauai Puerto Rican Association. The remaining ten members shall represent government, labor, business, culture and the arts, and the community at large. The governor shall designate the chair of the commission from among the appointed members. The members shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

SECTION 4. **Powers and duties.** The commission shall prepare an overall program to celebrate the centennial anniversary of the arrival of the Puerto Rican people to Hawaii, their significant contributions to the development of this State, and their culture and heritage. The commission shall develop, plan, and coordinate the various program activities that are to be scheduled throughout the year of the celebration and shall encourage the participation of all segments of the Puerto Rican community. In fulfilling its responsibilities, the commission shall consult, cooperate with, and seek advice from the Puerto Rican Heritage Society, the United Puerto Rican Association of Hawaii, Inc., the Maui Puerto Rican Association, the Kohala Puerto Rican Association, the Kauai Puerto Rican Association, and other appropriate organizations and agencies.

The commission shall submit to the governor a comprehensive report for the centennial anniversary celebration which shall include, but not be limited to:

(1) The production, publication, and distribution of books, films, and other educational materials on the life and experiences of Puerto Ricans in Hawaii;
(2) Conferences, convocations, lectures, and seminars; and
(3) Traveling exhibits, other exhibits, ceremonies, theatrical productions, and other special events commemorating the anniversary.

SECTION 5. **Trust fund established.** There is hereby created a trust fund to be known as the ethnic celebration trust fund which shall consist of payments made to the trust fund as provided in this Act. All moneys received by the commission shall be deposited by the state director of finance into the trust fund and expended by the commission for the purposes of this Act. Disbursement of such moneys shall be by state warrants issued in accordance with applicable laws and rules and shall be based on vouchers signed by the chair of the commission.

The commission may seek grants from public and private sources and may accept donations to finance the projects, programs, and activities of the centennial anniversary celebration. Any funds received shall be deposited in the ethnic celebration trust fund.

All property acquired by the commission shall be deposited for preservation in the state library system, museums, and public archives or shall otherwise be disposed of as directed by the commission.

SECTION 6. **Final report.** At the end of its term, the commission shall submit to the governor a final report of all its activities, including an accounting of all moneys received and disbursed.

SECTION 7. This Act shall take effect on July 1, 1999.

(Approved June 18, 1999.)

ACT 77 H.B. NO. 172

A Bill for an Act Relating to Hospice Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The blue ribbon panel on living and dying with dignity was formed by the governor in late 1996 to consider the many issues involved in death and dying and to suggest guidelines for public policy. In May 1998, the blue ribbon panel issued its final report and made seven recommendations, six of which were made unanimously. The fourth unanimous recommendation recommends that hospice care be made more available and offered more expediently to the dying.

Hospice care is not a place. It is a service that can be delivered at home, in a freestanding unit operated by the hospice, in nursing or care homes, or even in beds set aside in acute care hospitals. Hospice care is a philosophy which accepts that an illness has progressed to a terminal stage, and death cannot be avoided even with aggressive medical treatment. The goal of hospice care is not to prolong life, but to make dying as comfortable as possible for the person dying, and for family and friends. The blue ribbon panel found that many of Hawaii's health care providers believe that if pain management can be improved and hospice care increased, few people would consider physician-assisted death, which may be viewed as desirable when pain is not controlled and when the patient foresees being in a sterile or strange hospital or other residential program, rather than dying at home in the presence of loved ones.

The legislature finds that hospice care not only increases patient satisfaction but also almost always costs less than either hospital care or other forms of acute care at the end of life. Yet, hospice care is underutilized. Each year, of eight thousand deaths in Hawaii, five thousand could have benefitted from hospice care, yet only about one thousand five hundred persons received hospice care.

According to the blue ribbon panel, the Medicare per diem rate of $107 would establish a floor but this rate would still not allow hospice providers to recover their full costs amounting to $160 to $210 per day in room and board costs. If these additional costs were reimbursed, it would still be lower than the $458 per diem Medicaid reimbursement for similar costs in acute care hospitals.

The blue ribbon panel also specifically recommended making hospice referral visits a reimbursable benefit regardless of whether a patient is eventually admitted to a hospice or not. Implementing this recommendation would go a long way towards encouraging greater use of hospice care on a timely basis.

The purpose of this Act is to implement two specific recommendations made by the blue ribbon panel regarding hospice care:

(1) To make the Medicare per diem rate, the current rate set by the Health Care Financing Administration, the base rate for hospice care and to additionally reimburse room and board expenses of hospice facilities; and

(2) To make hospice referral visits a reimbursable benefit regardless of whether a patient is eventually admitted to a hospice or not.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- **Hospice homes; permitted use in residential areas.** For purposes of section 46-4, a hospice home shall be considered a residential use of property and shall be a permitted use in residentially designated zones including but not limited to zones for single-family dwellings. No conditional use, permit, variance, or special exception shall be required for a residence used as a hospice home.

For purposes of this section, "hospice home" means any facility operated by a licensed hospice service agency providing twenty-four-hour living accommodations to no more than five unrelated persons who are admitted to the hospice program of care."

SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§321- **Hospice services.** (a) The department of health may license hospice service agencies. If the department licenses hospice service agencies, the director shall adopt rules in accordance with chapter 91 regarding hospice service agencies that shall:

(1) Protect the health, safety, welfare, and civil rights of persons residing in their place of residence; and
(2) Provide penalties for the failure to comply with any rule.

Licensing shall be required annually for the first two years of licensure. Thereafter, licensing shall be required biennially; provided that if the department of health receives a complaint regarding the hospice service agency from the time of the last licensure, the licensing shall be required annually until such time as the department is satisfied that licensing may proceed biennially.

(b) For the purpose of this section:

"Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.

"Hospice service agency" means an agency or organization, or a subdivision of that agency or organization, which is engaged in providing hospice services at the place of residence of its clients."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

"§431:10A- **Hospice care coverage.** (a) Any other law to the contrary notwithstanding, commencing on January 1, 2000, all authorized insurers that provide for payment of or reimbursement for hospice care, shall reimburse hospice care services for each insured policyholder covered for hospice care according to the following:

(1) A minimum daily rate as set by the Health Care Financing Administration for hospice care;
(2) Reimbursement for residential hospice room and board expenses directly related to the hospice care being provided; and
(3) Reimbursement for each hospice referral visit during which a patient is advised of hospice care options, regardless of whether the referred patient is eventually admitted to hospice care.

(b) Every insurer shall provide notice to its policyholders regarding the coverage required by this section. Notice shall be in writing and in literature or correspondence sent to policyholders, beginning with calendar year 2000, along with any other mailing to policyholders, but in no case later than July 1, 2000."

SECTION 5. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

"§432:1- **Hospice care coverage.** (a) Any other law to the contrary notwithstanding, commencing on January 1, 2000, all mutual benefit societies issuing or renewing an individual and group hospital or medical service plan, policy, contract, or agreement in this State that provides for payment of or reimbursement for hospice care, shall reimburse hospice care services for each insured member covered for hospice care according to the following:

(1) A minimum daily rate as set by the Health Care Financing Administration for hospice care;

(2) Reimbursement for residential hospice room and board expenses directly related to the hospice care being provided; and

(3) Reimbursement for each hospice referral visit during which a patient is advised of hospice care options, regardless of whether the referred patient is eventually admitted to hospice care.

(b) Every insurer shall provide notice to its members regarding the coverage required by this section. Notice shall be in writing and in literature or correspondence sent to members, beginning with calendar year 2000, along with any other mailing to members, but in no case later than July 1, 2000."

SECTION 6. Section 321-15.1, Hawaii Revised Statutes, is amended by adding the definition of "hospice home" to be appropriately inserted and to read as follows:

"<u>"Hospice home" means any facility operated by a licensed hospice service agency providing twenty-four-hour living accommodations to no more than five unrelated persons who are admitted for hospice service.</u>"

SECTION 7. Section 321-15.7, Hawaii Revised Statutes, is amended to read as follows:

"**§321-15.7 Penalty.** Any person who intentionally operates an adult residential care home or hospice <u>home</u> without a license shall be guilty of a misdemeanor."

SECTION 8. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432D-23[]] Required provisions and benefits.** Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, [and] 431:10A-116.6<u>, and 431:10A-___</u>, and chapter 431M."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 10. This Act shall take effect upon its approval.

(Approved June 21, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 78 H.B. NO. 212

A Bill for an Act Relating to Driving Under the Influence of Intoxicating Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that serious motor vehicle collisions involving child passengers are on the increase. Many of these collisions have involved a driver who consumed intoxicating liquor and then operated a motor vehicle. In several recent incidents, child passengers of vehicles driven by such drivers have been killed or severely injured. Therefore, the legislature finds that stronger penalties are needed to deter persons who would endanger their child passengers by "drinking and driving."

Accordingly, it is the purpose of this Act to impose an additional, stiffer fine (in addition to the existing penalties for driving under the influence of intoxicating liquor) on any person age eighteen years or over convicted of driving under the influence of intoxicating liquor while having in the vehicle a passenger younger than fifteen years of age. The Act also clarifies that a conviction under section 291-4.4, Hawaii Revised Statutes (habitually driving under the influence), counts as a prior driving under the influence of intoxicating liquor offense for sentencing purposes.

SECTION 2. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For the first offense, or any offense not preceded within a five-year period by a conviction <u>for driving under the influence of intoxicating liquor</u> under this section[,] <u>or section 291-4.4</u> by:
   (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and
   (B) Ninety-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcoholism treatment programs; and
   (C) Any one or more of the following:
      (i) Seventy-two hours of community service work;
      (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
      (iii) A fine of not less than $150 but not more than $1,000.
(2) For an offense [which] <u>that</u> occurs within five years of a prior conviction <u>for driving under the influence of intoxicating liquor</u> under this section[,] <u>or section 291-4.4</u> by:
   (A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;
   (B) Either one of the following:

(i) Not less than one hundred hours of community service work; or

(ii) Not less than forty-eight consecutive hours but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and

(C) A fine of not less than $500 but not more than $1,500.

(3) For an offense [which] that occurs within five years of two prior convictions for driving under the influence of intoxicating liquor under this section[,] or section 291-4.4 by:

(A) A fine of not less than $500 but not more than $2,500;

(B) Revocation of license for a period not less than one year but not more than five years; and

(C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively.

(4) Any person eighteen years of age or older, who is convicted under this section and who operated or assumed actual physical control of a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of $500, and an additional mandatory term of imprisonment of forty-eight hours; provided, however, that the total term of imprisonment for a person convicted under this section shall not exceed thirty days.

[(4)] Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor[,] under this section or section 291-4.4 shall be considered a prior conviction[.] for purposes of imposing sentence under this section.

[(5)] No license suspension or revocation shall be imposed pursuant to this subsection if the person's license has previously been administratively revoked pursuant to part XIV of chapter 286 for the same offense; provided that, if the administrative revocation is subsequently reversed, the person's license shall be suspended or revoked as provided in this subsection."

SECTION 3. Section 291-4.4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purposes of this section, a driving under the influence offense means a violation of this section or section 291-4, 291-7, or 707-702.5, or violation of laws in another jurisdiction [which] that requires proof of each element of the offenses punishable under either this section or section 291-4, 291-7, or 707-702.5 if committed in Hawaii."

SECTION 4. No person arrested for a violation of section 291-4, Hawaii Revised Statutes, prior to the effective date of this Act shall be sentenced to an additional mandatory $500 fine or to an additional mandatory term of forty-eight hours of imprisonment under this Act. This Act shall apply, for purposes of determining prior convictions under sections 291-4 and 291-4.4, Hawaii Revised Statutes, to any person convicted under section 291-4 or 291-4.4 prior to its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 21, 1999.)

ACT 79 H.B. NO. 1575

A Bill for an Act Making An Appropriation for the Millenium Young People's Congress.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Millennium Young People's Congress (Congress) is scheduled to be held in Honolulu in October, 1999. The Congress is sponsored by the Peace Child International, a London-based nonprofit organization that is sponsored by the United Nations. It is anticipated that one thousand of the world's most active and enthusiastic young people, ages fifteen to eighteen, from one hundred eighty-nine countries, and their adult escorts, will attend the Congress. The purpose of the Congress is for youth to determine key priorities for sustaining and improving life in every nation of the world. The results of the Congress will be presented to world leaders in government, business, and the community. A television documentary will be made of the event, as well as a computer game, two books published in Hawaii, and an action fund established for future youth projects.

The legislature finds that the Congress is important to Hawaii's economic development by attracting national and international visitors to Hawaii, with the possibility of television news coverage and a television documentary. The legislature further finds that the youth visitors need a place to stay in private homes in Honolulu.

The purpose of this Act is to appropriate funds to the office of youth services to provide funds to ensure the safety and comfort of the Congress participants. The funds will be used for planning and coordination of the stays with host families, transportation to and from the site of the Congress, and family support expenses such as stipends for those families who would like to host delegates but cannot afford to.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $250,000 or so much thereof as may be necessary for fiscal year 1999-2000 to fund home stays in host family homes for the delegates of the Millennium Young People's Congress, including planning, coordination, transportation, and family support stipends.

SECTION 3. The sum appropriated shall be expended by the office of youth services for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 21, 1999.)

ACT 80 S.B. NO. 1011

A Bill for an Act Relating to the State Foundation on Culture and the Arts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Since its inception in 1965, the legislature has charged the state foundation on culture and the arts with the task of stimulating, guiding, and promoting culture, arts, history, and the humanities throughout the State. Within this framework, the commission's members have a fundamental role in focusing on the foundation's mission and ensuring that the organization's objectives are in harmony

with that mission. Thus, the legislature believes that a clearer direction would enable the foundation to meet its challenges as it enters the new millennium.

The legislature notes that across the country, art foundations have evolved to remain relevant and vibrant, and able to play a significant, if not the central force, in promoting culture and the arts in their respective communities. The legislature further believes that the foundation can and must occupy such a position in Hawaii and should be the lead state agency in this area.

Given the state's geographic location and cultural influences from not only the east and west, but indigenous Polynesia as well, the legislature acknowledges Hawaii as the cradle of unique cultural and artistic forms manifested in dance, music, theater, and the visual arts that are recognized throughout the world. The foundation can and must be the premier entity in cultivating art in this light and extending its reach to the youngsters of this State. From a humanitarian perspective, studying the arts not only broadens a child's perspective of the immediate environment, but also creates a heightened sense of awareness and connection with the past and present occupants and stewards of this world.

The legislature also finds that the foundation is in need of clearer direction to enable it to meet its challenges and to ensure that its programs meet their objectives. The legislature concurs with many of the findings of the legislative auditor's 1999 report on the foundation, and has incorporated some of its recommendations in this measure.

The purpose of this Act is to:

(1) Clarify the roles and responsibilities of the State foundation on culture and the arts commission and the executive director;
(2) Require neighbor island representation on the commission;
(3) Specify that agencies receiving capital improvement appropriations are responsible for calculating the one per cent due to the works of art special fund;
(4) Stipulate that the comptroller and the executive director are responsible for tracking all amounts due from each agency;
(5) Designate the foundation as the lead agency for arts education, in consultation with the department of education, the university of Hawaii at Manoa, the Hawaii association of independent schools, the Hawaii alliance for arts education, and other organizations; and
(6) Provide a means of financing for the review, revision, and completion of the Hawaii content and performance standards in the arts for grades K-12 and the development of a statewide strategic plan.

SECTION 2. Section 9-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"""Commission'' means the state foundation on culture and the arts commission established in section 9-2.

''Executive director'' means the executive director of the state foundation on culture and the arts appointed in section 9-2.''

SECTION 3. Section 9-2, Hawaii Revised Statutes, is amended to read as follows:

''§9-2 Establishment of foundation. (a) There is hereby created a state foundation on culture and the arts, which shall be placed within the department of accounting and general services for administrative purposes.

(b) The foundation shall be governed by a policymaking and oversight commission to be known as the state foundation on culture and the arts commission. The commission shall be composed of nine members to be appointed and removed

by the governor pursuant to section 26-34. The term of each member shall be for four years, commencing on July 1 and expiring on June 30[; provided that of the nine members appointed for terms commencing January 1, 1978, three members shall serve for four years, three members shall serve for three years, and the remaining three members shall serve for two years.]; provided that for terms commencing on or after July 1, 1999, the governor shall appoint at least one member who resides in the county of Hawaii, one member who resides in the county of Kauai, and one member who resides in the county of Maui. The governor shall appoint the chairperson of the [foundation] commission from among [the] its members [thereof]. The members of the [foundation] commission shall serve without compensation, but [they] shall be reimbursed for travel and other necessary expenses in the performance of their official duties.

[The foundation shall be placed within the department of accounting and general services for administrative purposes.]

(c) The commission shall appoint an executive director of the foundation, who shall:

(1) Serve as the foundation's chief executive officer;
(2) Be responsible for developing and administering the foundation's programs under the commission's direction;
(3) Serve on a part-time or full-time basis;
(4) Be a person who, by reason of education or extensive experience, is generally recognized as being professionally qualified in the administration of programs in the fields of culture, the arts, history, and the humanities;
(5) Be familiar with the people and cultures of Hawaii;
(6) Be exempt from chapters 76 and 77; and
(7) Select necessary additional staff pursuant to chapters 76 and 77, within available appropriations."

SECTION 4. Section 9-3, Hawaii Revised Statutes, is amended to read as follows:

"**§9-3 Duties.** The foundation shall:

(1) Assist in coordinating the plans, programs, and activities of individuals, associations, corporations, and agencies concerned with the preservation and furtherance of culture and the arts and history and the humanities;
(2) Establish written standards and criteria by which grant contracts shall be evaluated;
(3) Appraise the availability, adequacy, and accessibility of culture and the arts and history and the humanities to all persons throughout the State and devise programs whereby culture and the arts and history and the humanities can be brought to those who would otherwise not have the opportunity to participate;
(4) Stimulate, guide, and promote culture and the arts and history and the humanities throughout the State;
(5) Devise and recommend legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities;
(6) Study the availability of private and governmental grants for the promotion and furtherance of culture and the arts and history and the humanities;
(7) Through its [chairperson:] executive director:

(A) Administer funds allocated by grant, gift, or bequest to the foundation; accept, hold, disburse, and allocate funds which may become available from other governmental and private sources; provided that all those funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of any designation, the funds shall be disbursed or allocated for the promotion and furtherance of culture and the arts and history and the humanities; and

(B) Accept, hold, disburse, and allocate public funds that are made available to the foundation by the legislature for disbursement or allocation, pursuant to the standards and procedures established in part II, for the promotion and furtherance of culture and the arts and history and the humanities;

[(8) Select and employ a director to serve on a part-time or full-time basis who shall be a person who by reason of education or extensive experience is generally recognized as being professionally qualified in the administration of programs in the fields of culture and the arts and history and the humanities, who is familiar with the peoples and cultures of Hawaii, and who shall be exempt from chapters 76 and 77 and select necessary additional staff subject to chapters 76 and 77, within available appropriations;

(9)] (8) Submit an annual report with recommendations to the governor and legislature, prior to February 1, of each year. Annual reports shall include the total number and amount of gifts received, payroll disbursements, contracts entered into, and progress and accomplishments made during the year;

(9) In consultation with the department of education, the colleges of education and arts and humanities of the university of Hawaii at Manoa, and other arts education organizations with statewide representation:

(A) Review, revise, and complete the Hawaii content and performance standards in the arts for all K-12 grade students; and

(B) Develop a statewide strategic plan for grades K-12 arts education that incorporates and integrates the arts content and performance standards established in subparagraph (A). The plan shall address curriculum development for classroom instruction, professional development for educators and artists, and the methodology and mechanisms by which implementation and attainment of fine arts content and performance standards can be ascertained and assessed;

(10) Display student art works in public buildings, sponsor student art displays, promote arts education, and in other ways encourage the development of creative talent among the young people of Hawaii;

(11) In cooperation with qualified organizations conduct research, studies, and investigations in the fields of ethnohistory and the humanities; make, publish, and distribute works documenting the contributions of individual ethnic groups in their relationship to one another and to the whole population of Hawaii; place ethnohistorical and cultural materials developed by the foundation or received by the foundation as gifts and donations in public archives, libraries, and other suitable institutions accessible to the public; and maintain a register of the location of such materials;

(12) Cooperate with and assist the department of land and natural resources and other state agencies in developing and implementing programs

relating to historic preservation, research, restoration, and presentation, as well as museum activities; and

(13) Establish an individual artist fellowship program to encourage artists to remain and work in Hawaii and to reaffirm the importance of Hawaii's artists and their cultural and economic contributions to the State by:

(A) Recognizing and honoring Hawaii's exceptionally talented visual and performing artists for their outstanding work and commitment in the arts; and

(B) Enabling these artists to further their artistic goals."

SECTION 5. Section 103-8.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103-8.5[]] Works of art special fund.** (a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings.

(b) The works of art special fund shall be used solely for the following purposes:

(1) Costs related to the acquisition of works of art, including any consultant or staff services required to carry out the art in public places and relocatable works of art programs;

(2) Site modifications, display, and interpretive work necessary for the exhibition of works of art;

(3) Upkeep services, including maintenance, repair, and restoration of works of art; [and]

(4) Storing and transporting works of art[.];

(5) Reviewing, revising, and completing the Hawaii content and performance standards in the arts for all K-12 grade students; and

(6) Developing a statewide strategic plan for grades K-12 arts education that incorporates and integrates the arts content and performance standards established in paragraph (5).

(c) The one per cent amount, which is included in all capital improvement appropriations, shall be calculated at the time the appropriation bills are signed into law. The moneys shall be transferred into the works of art special fund upon availability of moneys from the appropriations. Each agency receiving capital improvement appropriations shall calculate the one per cent amount and transfer the moneys into the works of art special fund.

(d) The comptroller and the state foundation on culture and the arts shall decide on the specific art objects to acquire, giving first consideration to placing appropriate pieces of art at the locations of the original appropriation.

The selection of, commissioning artists for, reviewing of design, execution, and placement of, and the acceptance of works of art shall be the responsibility of the comptroller and the state foundation on culture and the arts in consultation with the affected agency or department.

Expenditures from the works of art special fund shall be made by the comptroller.

(e) The comptroller shall:

(1) Provide each agency receiving capital improvement appropriations with information regarding items that shall be included and excluded from the one per cent amount;

(2) Ensure that each agency calculates its one per cent amount correctly; and

(3) Ensure that each agency transfers the correct amount to the works of art special fund in a timely manner;[1]

(f) The comptroller and the executive director shall track amounts due from each agency under the one per cent requirement as provided in this section."

SECTION 6. Pursuant to section 9-3, Hawaii Revised Statutes, the state foundation on culture and the arts shall include in its annual report its efforts and progress on the Hawaii content and performance standards in the arts.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that:
(1) Section 103-8.5(b)(5) and (6), Hawaii Revised Statutes, as amended by section 5 of this Act; and
(2) Section 6 of this Act,
shall be repealed on June 30, 2001.

(Approved June 21, 1999.)

Note

1. So in original.

ACT 81

H.B. NO. 307

A Bill for an Act Relating to Higher Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. It is the intent and purpose of the legislature to establish a qualified state tuition program pursuant to section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, and any regulations promulgated thereunder.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
COLLEGE SAVINGS PROGRAM

§ **-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Account" or "college account" means an individual savings account established in accordance with this chapter.

"Account owner" means the individual who enters into a tuition savings agreement pursuant to this chapter and as defined under the final regulations adopted by the Internal Revenue Service.

"Designated beneficiary" means a designated beneficiary as defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

"Financial organization" means an organization authorized to do business in the State of Hawaii that is:
(1) Certified as an insurer by the insurance commissioner;
(2) Licensed or chartered as a financial institution by the commissioner of financial institutions;
(3) Chartered by an agency of the federal government;

(4) Subject to the jurisdiction and regulation of the securities and exchange commission of the federal government; or

(5) Any other entity otherwise authorized to act in this state as a trustee pursuant to the provisions of the Employee Retirement Income Security Act of 1974, as may be amended from time to time.

''Institution of higher education'' means an institution defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

''Management contract'' means the contract executed by the director of finance and a financial organization selected to act as a depository and manager of the program.

''Member of the family'' means a family member as defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

''Nonqualified withdrawal'' means a withdrawal from an account that is not:

(1) A qualified withdrawal;

(2) A withdrawal made as the result of the death or disability of the designated beneficiary of an account; or

(3) A withdrawal made on the account of a scholarship.

''Program'' means the college savings program.

''Program manager'' means a financial organization selected by the director of finance to act as a depository and manager of the program.

''Qualified higher education expenses'' means any qualified higher education expense defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

''Qualified withdrawal'' means withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

''Tuition savings agreement'' means an agreement between the director of finance or a financial organization and the account owner.

§ **-2 College savings program established.** There is established the college savings program. The purpose of this program is to enable families to save for college tuition and other expenses through college accounts. The program shall provide college accounts to:

(1) Enable residents of this State and other states to benefit from the tax incentive provided for qualified state tuition programs under the Internal Revenue Code of 1986, as amended; and

(2) Attract students to public and private colleges and universities within the State.

§ **-3 Functions and powers of the director of finance.** (a) The director of finance shall implement the program under the terms and conditions established by this chapter. The director of finance may make changes to the program as required for participants to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(b) The director of finance may implement the program through the use of financial organizations as account depositories and managers. Under the program, individuals may establish accounts directly with an account depository.

(c) The director of finance may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instrument that will be held in accounts. The director of finance shall select as program depositories and managers the financial organizations, from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this State, based on the following factors:

(1) The financial stability and integrity of the financial organization;
(2) The safety of the investment instrument being offered;
(3) The ability of the investment instrument to track the expected increasing costs of higher education;
(4) The ability of the financial organization to satisfy recordkeeping and reporting requirements;
(5) The financial organization's plan for promoting the program and the resources it is willing to allocate to promote the program;
(6) The fees, if any, proposed to be charged to persons for opening accounts;
(7) The minimum initial deposit and minimum contributions that the financial organization will require;
(8) The ability of financial organizations to accept electronic withdrawals, including payroll deduction plans; and
(9) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses to operate the program.

(d) The director of finance may enter into a contract of up to ten years with a financial organization. The financial organization shall provide only one type of investment instrument. The management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of section -4 and to manage the program to qualify it as a qualified state tuition plan under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;
(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the director of finance with the information necessary to prepare the statements required by section -4;
(3) Compile information contained in statements required to be prepared under section -4 and provide the compilations to the director of finance;
(4) If there is more than one program manager, provide the director of finance with the information necessary to determine compliance with section -4;
(5) Provide the director of finance or designee access to the books and records of the program manager to the extent needed to determine compliance with the contract;
(6) Hold all accounts for the benefit of the account owner;
(7) Be audited at least annually by a firm of certified public accountants selected by the program manager, and provide the results of the audit to the director of finance; and
(8) Provide the director of finance with copies of all regulatory filings and reports related to the program made by it during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the director of finance, the results of any periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under applicable law or the rules of the commission.

(e) The director of finance may select more than one financial organization and investment instrument for the program when the Internal Revenue Service has provided guidance that giving a contributor the choice of two or more investment

instruments under a state program will not cause the program to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(f) The director of finance may require an audit to be conducted of the operations and financial position of the program depository and manager at any time if the director of finance has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program depository or manager.

(g) During the term of any contract with a program manager, the director of finance shall conduct an examination of the manager and its handling of accounts. The examination shall be conducted at least biennially if the manager is not otherwise subject to periodic examination by the commissioner of financial institutions, the Federal Deposit Insurance Corporation, or other similar entity.

(h) If selection of a financial organization as a program manager or depository is not renewed, after the end of the term:

(1) Accounts previously established and held in investment instruments at the financial organization may be terminated;
(2) Additional contributions may be made to the accounts;
(3) No new accounts may be placed with the financial organization; and
(4) Existing accounts held by the depository shall remain subject to all oversight and reporting requirements established by the director of finance.

If the director of finance terminates a financial organization as a program manager or depository, the director of finance shall take custody of accounts held by the financial organization and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(i) The director of finance may establish a nominal fee for an application for a college account.

(j) The director of finance may enter into contracts for the services of consultants for rendering professional and technical assistance and advice and any other contracts that are necessary and proper for the implementation of the program.

(k) The director of finance may adopt rules to implement the program pursuant to chapter 91.

§ **-4 Program requirements; college account.** (a) A college account may be opened by any person who desires to save money for the payment of the qualified higher education expenses on behalf of a designated beneficiary. The person shall be considered the account owner as defined in section -1. An application for an account shall be in the form prescribed by the program and shall contain the following:

(1) The name, address, and social security number or employer identification number of the account owner;
(2) The designation of a beneficiary;
(3) The name, address, and social security number of the designated beneficiary;
(4) A certification relating to no excess contributions; and
(5) Other information as the program may require.

(b) Only the account owner may make contributions to the account after the account is opened.

(c) Contributions to accounts may be made only in cash.

(d) An account owner may withdraw all or part of the balance from an account on sixty days notice or a shorter period as may be authorized under rules governing the program. The rules shall include provisions to generally enable the

determination of whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may require one or more of the following:

(1) An account owner seeking to make a qualified withdrawal shall provide certifications of qualified higher education expenses and other information required to comply with section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;

(2) Withdrawals not meeting the requirements of this section shall be treated as nonqualified withdrawals by the program manager, and if the withdrawals are subsequently deemed qualified withdrawals within a reasonable time period as specified by the Director of Finance, the account owner shall seek any refund of penalties directly from the program.

(e) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary. An account owner may transfer all or a portion of an account to another college account, the designated beneficiary of which is a member of the same family, as defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, as the beneficiary of the initial account. Changes in designated beneficiaries and transfers under this section shall not be permitted if they constitute excess contributions.

(f) In the case of any nonqualified withdrawal from an account, an amount equal to ten per cent (or that rate imposed under final regulations adopted by the Internal Revenue Service) of the portion of the withdrawal constituting income as determined in accordance with the principles of section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, shall be withheld as a penalty and paid to the college savings program trust fund.

(g) The percentage of the penalty described in subsection (f) may be increased if the director of finance determines that the amount of the penalty must be increased to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(h) The percentage of the penalty described in subsection (f) may be decreased by rule if it is determined that:

(1) The penalty is greater than the amount required to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation; and

(2) The penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating the program and recover any prior costs not previously recovered.

(i) If an account owner makes a nonqualified withdrawal and no penalty amount is withheld pursuant to subsection (f), or the amount withheld was less than the amount required to be withheld under subsection (f) for nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty to the program. The unpaid portion shall be paid on the date that the account owner files the account owner's state or federal income tax return, whichever is filed earlier, for the taxable year of the withdrawal. If the account owner does not file a return, the unpaid portion shall be paid on the date that the earlier return is due. Authorized extensions to filing returns may be taken into account in determining the date for paying the unpaid portion.

(j) The program shall provide separate accounting for each designated beneficiary.

(k) No account owner or designated beneficiary of any account shall be permitted to direct the investment of any contributions to an account or the earnings on it.

(l) Neither an account owner nor a designated beneficiary shall use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

(m) Contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the designated beneficiary shall not be allowed. The prohibition on excess contributions shall conform to section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(n) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution shall be reported to the Internal Revenue Service and the account owner, the designated beneficiary, or the distributee, to the extent required by federal law or regulation.

Statements shall be provided to each account owner at least once each year within sixty days after the end of the twelve-month period to which they relate. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the director of finance requires to be reported to the account owner.

Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

(o) A local government or organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or successor legislation, may open and become the account owner of an account to fund scholarships for persons whose identify[1] shall be determined upon disbursement. Any account opened pursuant to this subsection is not required to comply with the condition set forth in subsection (a) that a beneficiary be designated when an account is opened, and each individual who receives an interest in the account as a scholarship shall be treated as a designated beneficiary.

(p) An annual fee may be imposed upon the account owner for the maintenance of the account.

(q) A qualified withdrawal may be made only after at least three calendar years have elapsed from the time an account is opened.

(r) The program shall disclose in writing the following information to each account owner and prospective account owner of a college account:

(1) The terms and conditions for purchasing a college account;
(2) Any restrictions on the substitution of beneficiaries;
(3) The person or entity entitled to terminate the tuition savings agreement;
(4) The period of time during which a beneficiary may receive benefits under the tuition savings agreement;
(5) The terms and conditions under which money may be wholly or partially withdrawn from the program, including any reasonable charges and fees that may be imposed for withdrawal; and
(6) The probable tax consequences associated with contributions to and distributions from accounts.

§ **-5 Program limitations; college account.** (a) Nothing in this chapter shall be construed to:

(1) Give any designated beneficiary any rights or legal interest with respect to an account;
(2) Guarantee that a designated beneficiary:

(A) Will be admitted to an institution of higher education; or
(B) Upon admission to an institution of higher education, will be permitted to continue to attend or will receive a degree from the institution;

(3) Create state residency for an individual merely because the individual is a designated beneficiary; or

(4) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(b) Nothing in this chapter shall create or be construed to create any obligation of the director of finance, the State, or any agency or instrumentality of the State to guarantee for the benefit of any account owner or designated beneficiary with respect to:

(1) The rate of interest or other return on any account; or

(2) The payment of interest or other return on any account.

The director of finance shall provide by rule that every contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by the State and neither the principal deposited nor the investment return is guaranteed by the State.

§ **-6 College savings program trust fund.** (a) There is established the college savings program trust fund. The director of finance shall have custody of the fund. All payments from the fund shall be made in accordance with this chapter.

(b) The fund shall consist of a trust account and an operating account. The trust account shall include amounts received by the college savings program pursuant to tuition savings agreements, administrative charges, fees, and all other amounts received by the program from other sources, and interest and investment income earned by the fund. The director of finance, from time to time, shall make transfers from the trust account to the operating account for the immediate payment of obligations under tuition savings agreements, operating expenses, and administrative costs of the college savings program. Administrative costs shall be paid out of the operating account.

(c) The director of finance, as trustee, shall invest the assets of the fund in securities that constitute legal investments under State laws relating to the investment of trust fund assets by trust companies, including those authorized by article 8 of chapter 412. Trust fund assets shall be kept separate and shall not be commingled with other assets, except as provided in this chapter. The director of finance may enter into contracts to provide for investment advice and management, custodial services, and other professional services for the administration and investment of the program. Administrative fees, costs, and expenses, including investment fees and expenses, shall be paid from the assets of the fund.

(d) The director of finance shall provide for the administration of the fund, including maintaining participant records and accounts, and providing annual audited reports. The director of finance may enter into contracts for administrative services, including reports.

§ **-7 Tax reporting.** The director of finance or the program manager of the college savings program, or a designee, shall file a report annually, with the director of taxation, setting forth the names and identification numbers of account owners, designated beneficiaries, and distributees of college accounts, the amounts contributed to the accounts, the amounts distributed from the accounts, and the nature of the distributions as qualified withdrawals or as withdrawals other than qualified withdrawals, and any other information that the director of taxation may

require regarding the taxation under this chapter of amounts contributed to or withdrawn from the accounts."

SECTION 3. Chapter 654, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§654- College savings program.** (a) Moneys in an account created pursuant to chapter are exempt from application to the satisfaction of a money judgment as follows:

(1) 100 per cent of moneys in an account established in connection with a scholarship program;

(2) 100 per cent of moneys in an account where the judgment debtor is the account owner and the designated beneficiary of the account is a minor; and

(3) An amount not exceeding $10,000 in an account, or in the aggregate for more than one account, where the judgment debtor is the account owner of the account or accounts.

(b) For the purposes of this section, the terms "account owner" and "designated beneficiary" shall have the meanings ascribed to them in section -1."

SECTION 4. Statutory material to be repealed is bracketed.[2] New statutory material is underscored.[3]

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1999.

(Approved June 22, 1999.)

Notes

1. So in original.
2. No bracketed material.
3. Edited pursuant to HRS §23G-16.5.

ACT 82

H.B. NO. 562

A Bill for an Act Relating to Measurement Standards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 486-120.5, Hawaii Revised Statutes, is amended to read as follows:

"**[ ]§486-120.5[ ] Macadamia nuts; labeling requirements.** (a) If a label on a consumer package contains language that all of the raw or processed macadamia nuts contained in the package were grown in Hawaii, the label shall be worded, "100% Hawaii-Grown Macadamia Nuts", "Hawaii-Grown Macadamia Nuts", "100% Hawaiian Macadamia Nuts", or "Hawaiian Macadamia Nuts", and shall appear on the principal display panel of the package.

(b) All nonconsumer packages containing macadamia nuts grown in the State and introduced into intrastate or interstate commerce, shall bear on the package a label containing language that the package contains Hawaii-grown macadamia nuts. This label shall be in addition to all other labeling requirements specified in this chapter.

(c) Any person keeping, offering, displaying, exposing for sale, or soliciting for sale, any raw or processed macadamia nut product, which represents or which is branded or labeled that the macadamia nuts were grown in Hawaii, shall make available to the administrator, upon demand, documented proof that one hundred per cent of the macadamia nuts were grown in the State.

(d) It shall be a violation of this part to use a label containing the words, "100% Hawaii-Grown Macadamia Nuts", "Hawaii-Grown Macadamia Nuts", "100% Hawaiian Macadamia Nuts", or "Hawaiian Macadamia Nuts", or similar wording if any portion of the macadamia nuts contained in the package are not grown in the State.

[(e) For purposes of subsections (a), (b) and (c), only one hundred per cent Hawaii grown macadamia nuts may be labeled either "100% Hawaii-Grown Macadamia Nuts" or "Hawaii-Grown Macadamia Nuts".]"

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 22, 1999.)

ACT 83 H.B. NO. 746

A Bill for an Act Relating to Hula.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that hula has significant historical and cultural importance to Hawaii. The first oral account of a hula performance dates back to the seventh century. Hula performances were documented on the Kona coast at Kealakekua Bay, and on Oahu at Waimea Bay, although there were numerous other undocumented hula performances during that time. Hula later experienced a decline from 1830 to 1870 when Queen Kaahumanu, influenced by her Christian teachings that viewed hula as a "heathen practice", forbade public hula performances. However, despite the edict, hula continued to be a major source of communication and historical preservation to the Hawaiians as evidenced by the fact that clandestine hula schools operated in every district on all the islands and that people were irresistibly drawn to hula performances. It was not until King David Kalakaua's reign that the ban on public hula performances was lifted, at which time hula gained widespread acceptance and flourished at both official and unofficial functions.

In the early 1900s, hula became a feature at carnivals and pageants, endearing itself as the standard entertainment to the growing tourist trade. Due to the audience's lack of knowledge in the Hawaiian language, hula became a style of dancing in which the gesture became the important feature instead of being a dance form to portray a cultural story. As such, the non-traditional hula dancer became the image of Hawaii in the visitor's eye.

The legislature recognizes that in the last thirty years, the Hawaiian renaissance sparked a newfound interest in traditional hula. This has led to the birth of numerous hula festivals in Hawaii and around the world, including the Merrie Monarch Hula Festival (Hawaii), Queen Liliuokalani Keiki Hula Competition (Oahu), Ka La Hula I Orlando (Florida), Hula Festival of Tokyo (Japan), and Ka Leo O Na Hula Seminario (Mexico), to name a few. Hula's recent worldwide acceptance

can be attributed in part to the fact that people appreciate the significant role that hula plays in perpetuating the Hawaiian culture.

In the words of the Merrie Monarch Hula Festival, "hula is the language of the heart, and therefore the heartbeat of the Hawaiian people". The hula mele ma'i was composed to honor gods, chiefs, the newborn of royal families, and on occasions of importance to the whole populace, such as the completion of a canoe house, and the consecration of taro fields. However, more importantly, there is no "true" version of a dance, for when it comes to hula, the stories are true to the hula dancer as influenced by his or her environment and experiences. As such, hula is an important tool to teach the history, values, and philosophies of the Hawaiian culture.

The purpose of this Act is to bestow formal recognition on hula as a special livelihood with deep cultural roots in Hawaii by designating it as the official state dance.

SECTION 2. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated to read as follows:

"**§5- State dance.** Hula is adopted, established, and designated as the official dance of the State."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved June 22, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 84

H.B. NO. 1183

A Bill for an Act Relating to Beach Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The State has provided for the regulation and management of land use and development throughout the State under chapters 171, 183C, and 205A, Hawaii Revised Statutes, and has provided through these laws for the protection of beach lands which have natural, environmental, ecological, economic, recreational, scenic, cultural, or historic value and which protect property from flooding and erosion. However, these lands, though protected by these laws, may in many instances require restoration to serve various functions, including hazard mitigation, recreation, cultural appreciation, and ecological well-being, and generally be made accessible to all of the people of the State. The purpose of this Act is to provide for the restoration of public beach lands in those instances in which such restoration is considered to benefit the people of the State.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . RESTORATION OF BEACH LANDS**

§171- Definitions. For the purposes of this part:

"Beach lands" means all lands in the shoreline area including sand, rocky, or cobble beaches, dune systems, landward and seaward sand reserves, and all such lands subject to the natural processes of erosion and accretion. The term includes easements and rights in such land and any improvements on land.

"Beach restoration" means the placement of sand, with or without stabilizing structures, on an eroded beach from an outside source such as offshore sand deposits, streams, channels or harbor mouths, or an upland sand quarry.

"Coastal lands" means all land within the state coastal zone management area; provided that any leasing or development of public lands shall be limited to all fast lands up to one mile mauka of the shoreline and all submerged lands.

§171- **General powers.** (a) In carrying out its functions under this part, the board may do all things necessary, useful, and convenient in connection with the restoration of beach lands, subject to all applicable laws, and may provide any necessary assistance to any county or nongovernmental organization in the restoration of beach lands so long as the public interest is served; provided that for beach restoration on privately-owned lands, the board shall be required to obtain authorization from affected property owners.

(b) The board or the board's designee, subject to this chapter and chapters 183C and 205A, shall maintain and manage beach lands restored pursuant to this part as well as a beach restoration plan described in section 171- , subject to available funds.

§171- **Beach restoration plan.** The department shall prepare and, from time to time, revise plans for the restoration of beach lands of the State. These plans shall guide the board in identifying those beach lands in need of restoration which have been degraded as a result of natural or human actions and shall designate suitable coastal lands for the purpose of generating revenues to carry out the purposes of this section. In preparing these plans, the department may institute studies pertaining to the need for restoration of such lands and shall consider any plan relating to the restoration of such lands that has been prepared by any federal, state, county, or private agency or entity. The department may also institute other studies as necessary to support the development of beach restoration projects, including the development of socioeconomic profiles, environmental studies pertaining to sand source analysis, and ecological effects of beach restoration, cost-benefit analysis for project viability, and coastal engineering studies including data gathering.

§171- **Authority to lease coastal lands.** The board, subject to this chapter, may lease public coastal lands under the board's jurisdiction for the purpose of generating revenues to be deposited into the beach restoration fund. Any terms and conditions imposed by the board on the lessee shall run with the land and shall be binding on the lessees's heirs, successors, and assigns. The board may seek enforcement of such terms and conditions in any court of appropriate jurisdiction.

§171- **Development of public coastal lands.** On the lands subject to this part, the board may undertake appropriate development to generate revenues for beach restoration which is consistent with this chapter and chapters 183C and 205A and other applicable laws. These revenues shall be deposited in the beach restoration fund. For purposes of this section, "development" includes:

(1) Any building or mining operation;
(2) Any material change in use, intensity of use, or appearance of any structure or land, fast or submerged; or
(3) The division of land into two or more parcels.

§171- Beach restoration special fund. (a) There is established in the state treasury a special fund to be designated as the "beach restoration special fund" to carry out the purposes of this part. The following moneys shall be deposited into the beach restoration special fund:

(1) Proceeds from the lease or development of public coastal lands designated pursuant to a beach restoration plan, subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959;
(2) Proceeds from the lease of public lands pursuant to this part for an existing seawall or revetment;
(3) Fines collected for unauthorized shoreline structures on state submerged land or conservation district land;
(4) Appropriations made by the legislature for deposit into this fund;
(5) Donations and contributions made by private individuals or organizations for deposit into this fund;
(6) Fees collected for the processing of applications for coastal and beach erosion control projects; and
(7) Grants provided by governmental agencies or any other source.

(b) The beach restoration special fund may be used by the department for one or more of the following purposes:

(1) Planning, designing, development, or implementation of beach restoration projects pursuant to this part; and
(2) Providing grants to the counties, nongovernmental organizations, and the University of Hawaii for the restoration of beach lands and for research or engineering studies necessary to support beach restoration projects, subject to this part."

SECTION 3. There is appropriated out of the special land and development fund the sum of $250,000 or so much thereof as may be necessary for fiscal year 1999-2000 for deposit into the beach restoration special fund created in section 2.

SECTION 4. There is appropriated out of the beach restoration special fund the sum of $250,000 or so much thereof as may be necessary for fiscal year 1999-2000 for the restoration of beach lands.

SECTION 5. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 1999.

(Approved June 22, 1999.)

ACT 85 S.B. NO. 1091

A Bill for an Act Relating to Aquatic Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 188-44, Hawaii Revised Statutes, is amended to read as follows:

"§188-44 [Mullet, catching prohibited, when; exceptions.] Licenses for mullet. (a) [It is unlawful for any person to wilfully fish for, or attempt to take by

any means whatsoever, from any of the waters within the jurisdiction of the State, or to sell, offer for sale, or have in possession any mullet, known as amaama, or anaeholo during the months of December, January, or February; provided that] The department may issue a license to any owner or operator of a fish pond [may] to lawfully catch the young mullet known as pua during the closed season, for the purpose of stocking the owner's or operator's pond[;], and [provided further that any owner or operator of a fish pond or any commercial marine dealer may] lawfully sell pond raised mullet during the closed season [after first procuring a license to do so].

(b) [Any commercial marine dealer having more than one market or establishment shall take out a separate license for each market or establishment from which mullet are sold.] The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set reasonable fees [for selling pond raised mullet during the closed season.

(c) All licenses shall expire one year from the date of issuance].''

SECTION 2. Section 188-45, Hawaii Revised Statutes, is amended to read as follows:

''**§188-45 [Nehu and iao, taking prohibited; exceptions.** It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any nehu or iao; provided that any person may lawfully catch nehu for the person's family consumption or bait purposes with a net not longer than fifty feet; and provided further that the department of land and natural resources] **Licenses for nehu, iao, and other baitfish.** The department may issue to commercial marine licensees, as defined in chapter 187A, licenses to take nehu, iao, or any other species [for which an open season may be declared by the department] for use as bait only[; provided that nehu may be taken by any licensed commercial marine licensee only if employed on a live-bait tuna boat and only if the licensee's principal means of livelihood is derived from tuna fishing and the sale of tuna, and the nehu is not sold to others]. The department may adopt rules pursuant to chapter 91 for the purposes of this section. The licenses may be issued by the department upon terms and conditions the department may deem necessary to conserve the supply of the fish within state waters. The license may be summarily revoked for a violation of any term or condition [thereof,] of the license, and any or all licenses may be revoked summarily whenever, in the judgment of the department, the action is necessary for the conservation of the fish.

[Any person whose license has been revoked for violation of the terms and conditions of the person's license shall not be eligible for another license until the expiration of one year from the date of revocation.]''

SECTION 3. Section 188-57, Hawaii Revised Statutes, is amended to read as follows:

''**§188-57 [Certain crustaceans protected.] Licenses for certain crustaceans.** (a) [It is unlawful for any person to take, kill, sell, or offer for sale, or have in possession any Kona crabs taken from the waters within the jurisdiction of the State during the months of May, June, July, and August, or spiny lobster (ula), or slipper lobster (ula-papapa), taken from the waters within the jurisdiction of the State during the months of May, June, July, and August. The possession of any Kona crabs, by any person during the months of May, June, July, and August, and the possession of any spiny lobster, or slipper lobster by any person during the months of May, June, July, and August shall be prima facie evidence that the person is guilty of a violation of this section; provided that any] Any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve, during the closed season,

Kona crabs or lobsters lawfully caught during the open season by first procuring a license to do so.

(b) [Each licensee shall submit a report to the department within five days after the end of each of the months on blanks furnished by the department.] The department may adopt rules pursuant to chapter 91 necessary for the purpose of this chapter and to set fees for selling or serving Kona crab and lobster during the closed season.

[(c) All licenses shall expire one year from the date of issuance.]''

SECTION 4. Section 188-68, Hawaii Revised Statutes, is amended to read as follows:

''**§188-68 [Stony] Permits for coral[;] and rock with marine life attached[; taking and selling prohibited].** [(a) The intentional taking, breaking, or damaging with crowbar, chisel, or any other implement of any rock or coral to which marine life is visibly attached or affixed, or live stony coral of the taxonomic order, Madreporaria, including the Fungidae or Pocilloporidae families, is prohibited except with a permit authorized under section 187A-6 or chapter 183C or by the department] The department may issue permits, as authorized by this section, section 187A-6, chapter 183C, or under rules adopted pursuant to chapter 91 necessary for collecting live stony corals or marine life visibly attached to rocks placed in the water for a commercial purpose.

[(b) No person shall sell or offer for sale as souvenirs any stony coral of the taxonomic order, Madreporaria, of the species Montipora verrucosa, Fungia scutaria, Pocillopora damicornis, Pocillopora meandrina, Pocillopora eydouxi, Porites compressa, Porites lobata, and Tubastraea coccinea, provided that stony coral souvenirs shall not include coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry or obtained through dredging operations in Hawaii for agricultural or other industrial uses.]''

SECTION 5. Section 188-25, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 188-28.5, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 188-29, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 188-29.1, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 188-30, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 188-30.2, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 188-30.5, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 188-40, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 188-41, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 188-46, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 188-58, Hawaii Revised Statutes, is repealed.

SECTION 16. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 17. This Act shall take effect upon its approval and shall be repealed on June 30, 2002; provided that all sections of the Hawaii Revised Statutes that are amended or repealed by this Act shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved June 22, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 86 H.B. NO. 326

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§346- Medical foods and low-protein modified food products; treatment of inborn error of metabolism; notice. (a) Public assistance recipients in this State who receive medical assistance pursuant to this chapter shall be allowed coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism; provided that the medical food or low-protein modified food product is:

(1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
(2) Consumed or administered enterally under the supervision of a physician licensed under chapter 453 or 460.

The department shall adopt rules pursuant to chapter 91 to effectuate this subsection.

(b) All health maintenance organizations and prepaid health plans with which the department executes risk contracts for the provision of medical care to eligible public assistance recipients shall provide notice to their members regarding the coverage required by this section. The notice shall be in writing and prominently placed in any literature or correspondence sent to members and shall be transmitted to members within calendar year 2000 when annual information is made available to members, or in any other mailing to members, but in no case later than December 31, 2000.

(c) For the purposes of this section:

"Inborn error of metabolism" means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

"Low protein modified food product" means a food product that:

(1) Is specially formulated to have less than one gram of protein per serving;
(2) Is prescribed or ordered by a physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
(3) Does not include a food that is naturally low in protein.

"Medical food" means a food that is formulated to be consumed or administered enterally under the supervision of a physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional

requirements, based on recognized scientific principles, are established by medical evaluation."

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

"**§431:10A- Medical foods and low-protein modified food products; treatment of inborn error of metabolism; notice.** (a) Each policy of accident and sickness insurance, other than life insurance, disability income insurance, and long-term care insurance, issued or renewed in this State, each employer group health policy, contract, plan, or agreement issued or renewed in this State, all health insurance policies issued or renewed in this State, all policies providing family coverages as defined in section 431:10A-103, and all policies providing reciprocal beneficiary family coverage as defined in section 431:10A-601, shall contain a provision for coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its policyholders or dependents of the policyholder in this State; provided that the medical food or low protein modified food product is:

(1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
(2) Consumed or administered enterally under the supervision of a physician licensed under chapter 453 or 460.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.

(b) Every insurer shall provide notice to its policyholders regarding the coverage required by this section. The notice shall be in writing and prominently placed in any literature or correspondence sent to policyholders and shall be transmitted to policyholders during calendar year 2000 when annual information is made available to policyholders, or in any other mailing to policyholders, but in no case later than December 31, 2000.

(c) For the purposes of this section:

"Inborn error of metabolism" means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

"Low-protein modified food product" means a food product that:

(1) Is specially formulated to have less than one gram of protein per serving;
(2) Is prescribed or ordered by a physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
(3) Does not include a food that is naturally low in protein.

"Medical food" means a food that is formulated to be consumed or administered enterally under the supervision of a physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation."

SECTION 3. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

"**§432:1- Medical foods and low-protein modified food products; treatment of inborn error of metabolism; notice.** (a) All individual and group hospital and medical service plan contracts and medical service corporation con-

tracts under this chapter shall provide coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its members or dependents of the member in this State; provided that the medical food or low-protein modified food product is:

(1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and

(2) Consumed or administered enterally under the supervision of a physician licensed under chapter 453 or 460.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.

(b) Every mutual benefit society shall provide notice to its members regarding the coverage required by this section. The notice shall be in writing and prominently placed in any literature or correspondence sent to members and shall be transmitted to members during calendar year 2000 when annual information is made available to members, or in any other mailing to members, but in no case later than December 31, 2000.

(c) For the purposes of this section:

"Inborn error of metabolism" means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

"Low-protein modified food product" means a food product that:

(1) Is specially formulated to have less than one gram of protein per serving;

(2) Is prescribed or ordered by a physician as medically necessary for the dietary treatment of an inherited metabolic disease; and

(3) Does not include a food that is naturally low in protein.

"Medical food" means a food that is formulated to be consumed or administered enterally under the supervision of a physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation."

SECTION 4. Chapter 432D-23,[1] Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432D-23[]] Required provisions and benefits.** Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, [and] 431:10A-116.6, 431:10A- , and chapter 431M."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 6. This Act shall take effect upon its approval.

(Approved June 23, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 87 H.B. NO. 351

A Bill for an Act Relating to Privacy of Health Care Information.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that individuals have a constitutional right to privacy with respect to their personal health information and records, and with respect to information about their medical care and health status.

Traditionally, the primary health care relationship existed only between the patient and the doctor, and was founded upon the principle that all information transmitted between the patient and the doctor was confidential. With advancements in modern technology and systematic changes in health care practices, the patient-doctor relationship has expanded into a multi-party relationship that includes employers, health plans, consulting physicians and other health care providers, laboratories and hospitals, researchers and data organizations, and various governmental and private oversight agencies. These multiple relationships have fundamentally changed the handling and use of medical information. The legislature acknowledges that individuals are often unaware of how their medical information is being used and disclosed in the modern health care delivery system. Currently, there is no statute that comprehensively governs the disclosure of medical records. Most individuals sign a one-time blanket consent to release their medical records when they sign up for medical insurance, and doctors, hospitals, and insurance companies share these records as they see fit. Thus, the legislature believes that an individual's right to privacy of their medical records is currently unclear and at risk.

However, the legislature also recognizes that there are strong public policy justifications for encouraging health care quality through the review of medical information. First, these reviews help to improve the quality of health care in Hawaii by providing assessments of the results or outcomes of certain modes of treatment, thereby giving patients more information with which to make better medical choices. Second, medical information review helps to ferret out and prevent fraud and abuse in the health care delivery system. It is estimated that approximately $100 billion of the $1 trillion spent on health care nationally can be attributed to health care fraud. This drives up health care costs and takes needed health care dollars away from deserving patients. Third, clinical and epidemiological research based on medical information helps to promote the quality, efficiency, and effectiveness of the modern health care delivery system, and leads to new treatments which relieve suffering and save lives.

Therefore, the legislature firmly believes that encouraging affordable quality health care, facilitating effective medical research, and preventing fraud and abuse are necessary to the health and safety of our citizens. These are compelling state interests, that may be furthered by allowing the sharing of medical information for limited purposes, without eliminating the confidentiality of the patient-doctor relationship.

The purpose of this Act is to:

(1) Implement the right of the people to privacy established under section 6, article I of the Constitution of the State of Hawaii which provides that the legislature shall take affirmative steps to ensure protection of the right to privacy through legislation;

(2) Protect individuals from the adverse effects of the improper disclosure of protected medical record health information;

(3) Establish strong and effective mechanisms to protect against the unauthorized and inappropriate use of protected health information that is

created or maintained as part of health care treatment, diagnosis, enrollment, payment, plan administration, testing, or research processes;

(4) Promote the health and welfare of the public by encouraging the effective exchange and transfer of health information in a manner that will ensure the confidentiality of protected health information without impeding the delivery of high quality healthcare;

(5) Promote the public health and welfare by allowing, where appropriate, the transfer of personal health information into nonidentifiable health information for oversight, health research, public health, law enforcement, judicial, and administrative purposes;

(6) Discourage litigation by establishing a standard set of procedures that may be complied with to provide courts with strong evidence that medical information was properly handled and disclosed; and

(7) Establish remedies for violations of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
PRIVACY OF HEALTH CARE INFORMATION

PART I. GENERAL PROVISIONS

§ **-1 Definitions.** As used in this chapter, except as otherwise specifically provided:

"Accrediting body" means a committee, organization, or institution that has been authorized by law or is recognized by a health care regulating authority as an accrediting entity or any other entity that has been similarly authorized or recognized by law to perform specific accreditation, licensing, or credentialing activities.

"Agent" means a person who represents and acts for another under a contract or relationship of agency, or whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between the principal and a third person, including a contractor.

"Commissioner" means the insurance commissioner.

"Disclose" means to release, transfer, provide access to, share, or otherwise divulge protected health information to any person other than the individual who is the subject of the information. The term includes the initial disclosure and any subsequent redisclosures of protected health information.

"Educational institution" means an institution or place for instruction or education including any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for children and adults.

"Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, a debtor in possession or receiver or trustee in bankruptcy, or a legal representative of a deceased person, who has one or more regular individuals in his or her employment.

"Employment" means services performed for wages under any contract of hire, written or oral, expressed or implied, with an employer.

"Entity" means a health care provider, health care data organization, health plan, health oversight agency, public health authority, employer, insurer, health researcher, law enforcement official, or educational institution, except as otherwise defined for purposes of a particular section only.

"Health care" means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, palliative, or maintenance services:
  (A) With respect to the physical or mental condition of an individual; or
  (B) Affecting the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue;
or
(2) Any sale or dispensing of a drug, device, equipment, or other health care-related item to an individual, or for the use of an individual pursuant to a prescription or order by a health care provider.

''Health care data organization'' means an entity that engages primarily in the business of collecting, analyzing, and disseminating identifiable and non-identifiable patient information. A health care data organization is not a health care provider, an insurer, a health researcher, or a health oversight agency.

''Health care provider'' means a person who, with respect to any protected health information, receives, creates, uses, maintains, or discloses the protected health information while acting in whole or in part in the capacity of:
(1) A person who is licensed, certified, registered, or otherwise authorized by federal or state law to provide an item or service that constitutes health care in the ordinary course of business, or practice of a profession;
(2) A federal, state, or employer-sponsored program that directly provides items or services that constitute health care to beneficiaries; or
(3) An officer, employee, or agent of a person described in paragraph (1) or (2).

''Health oversight agency'' means a person who, with respect to any protected health information, receives, creates, uses, maintains, or discloses the information while acting in whole or in part in the capacity of:
(1) A person who performs or oversees the performance of an assessment, evaluation, determination, or investigation, relating to the licensing, accreditation, or credentialing of health care providers; or
(2) A person who:
  (A) Performs or oversees the performance of an audit, assessment, evaluation, determination, or investigation relating to the effectiveness of, compliance with, or applicability of, legal, fiscal, medical, or scientific standards or aspects of performance related to the delivery of, or payment for, health care; and
  (B) Is a public agency, acting on behalf of a public agency, acting pursuant to a requirement of a public agency, or carrying out activities under a federal or state law governing the assessment, evaluation, determination, investigation, or prosecution for violations of paragraph (1).

''Health plan'' means any health insurance plan, including any hospital or medical service plan, dental or other health service plan or health maintenance organization plan, provider-sponsored organization, or other program providing or arranging for the provision of health benefits, whether or not funded through the purchase of insurance.

''Health researcher'' means a person, or an officer, employee or independent contractor of a person, who receives protected health information as part of a systematic investigation, testing, or evaluation designed to develop or contribute to generalized scientific and clinical knowledge.

''Individual's designated representative'' means a person who is authorized by law (based on grounds other than the minority of an individual), or by an

instrument recognized under law, to act as an agent, attorney, guardian, proxy, or other legal representative of a protected individual. The term includes a health care power of attorney.

"Institutional review board" means a research committee established and operating in accord with Title 45 C.F.R. 46 sections 107, 108, 109, and 115.

"Insurer" means any person regulated under chapter 432D, article 1 of chapter 432, any group that has purchased a group insurance policy issued by a person regulated under chapter 432D, and any person regulated under article 10A of chapter 431, other than a life insurer, disability income insurer, or long-term care insurer.

"Law enforcement inquiry" means a lawful investigation conducted by an appropriate government agency or official inquiring into a violation of, or failure to comply with, any civil or administrative statute or any regulation, rule, or order issued pursuant to such a statute. It does not include a lawful criminal investigation or prosecution conducted by the county prosecutors or the department of the attorney general.

"Nonidentifiable health information" means any information that would otherwise be protected health information except that the information does not reveal the identity of the individual whose health or health care is the subject of the information and there is no reasonable basis to believe that the information could be used, either alone or with other information that is, or should reasonably be, known to be available to recipients of the information, to reveal the identity of that individual.

"Office of information practices" shall be as defined by chapter 92F.

"Person" means a government, governmental subdivision, agency or authority, corporation, company, association, firm, partnership, insurer, estate, trust, joint venture, individual, individual representative, and any other legal entity.

"Protected health information" means any information, identifiable to an individual, including demographic information, whether or not recorded in any form or medium that relates directly or indirectly to the past, present, or future:

(1) Physical or mental health or condition of a person, including tissue and genetic information;
(2) Provision of health care to an individual; or
(3) Payment for the provision of health care to an individual.

"Public health authority" means the department of health.

"Qualified health care operations" means:

(1) Only those activities conducted by or on behalf of a health plan or health care provider for the purpose of carrying out the management functions of a health care provider or health plan, or implementing the terms of a contract for health plan benefits as follows:
    (A) Payment, which means the activities undertaken by a health plan or provider which are reasonably necessary to determine responsibility for coverage, services, and the actual payment for services, if any;
    (B) Conducting quality assurance activities or outcomes assessments;
    (C) Reviewing the competence or qualifications of health care professionals;
    (D) Performing accreditation, licensing, or credentialing activities;
    (E) Analyzing health plan claims or health care records data;
    (F) Evaluating provider clinical performance;
    (G) Carrying out utilization management; or
    (H) Conducting or arranging for auditing services in accordance with statute, rule, or accreditation requirements;
(2) A qualified health care operation shall:

(A) Be an operation which cannot be carried on with reasonable effectiveness and efficiency without identifiable patient information;

(B) Be limited to only that protected health information collected under the terms of the contract for health plan benefits and without which the operation cannot be carried on with reasonable effectiveness and efficiency;

(C) Be limited to the minimum amount of protected health information, including the minimum number of records and the minimum number of documents within each patient's record, necessary to carry on the operation with reasonable effectiveness and efficiency; and

(D) Limit the handling and examination of protected health information to those persons who are reasonably well qualified, by training, credentials, or experience, to conduct the phase of the operation in which they are involved.

''Surrogate'' means a person, other than an individual's designated representative or relative, who is authorized to make a health-care decision for the individual.

''Treatment'' means the provision of health care by, or the coordination of health care among, health care providers, or the referral of a patient from one provider to another, or coordination of health care or other services among health care providers and third parties authorized by the health plan or the plan member.

''Unique patient identifier'' means a number or alpha-numeric string assigned to an individual, which can be or is used to identify an individual's protected health information.

''Writing'' means a written form that is either paper-or computer-based, and includes electronic signatures.

PART II. INDIVIDUAL'S RIGHTS

§ -11 Inspection and copying of protected health information. (a) For the purposes of this section only, ''entity'' means a health care provider, health plan, employer, health care data organization, insurer, or educational institution.

(b) At the request in writing of an individual and except as provided in subsection (c), an entity shall permit an individual who is the subject of protected health information or the individual's designee, to inspect and copy protected health information concerning the individual, including records created under section -12, that the entity maintains. The entity shall adopt appropriate procedures to be followed for the inspection or copying and may require an individual to pay reasonable costs associated with the inspection or copying.

(c) Unless ordered by a court of competent jurisdiction, an entity is not required to permit the inspection or copying of protected health information if any of the following conditions are met:

(1) The entity determines that the disclosure of the information could reasonably be expected to endanger the life or physical safety of, or cause substantial mental harm to, the individual who is the subject of the record;

(2) The information identifies, or could reasonably lead to the identification of, a person who provided information under a promise of confidentiality concerning the individual who is the subject of the information unless the confidential source can be protected by redaction or other similar means;

(3) The information is protected from discovery as provided in section 624-25.5; or

(4) The information was collected for or during a clinical trial monitored by an institutional review board, the trial is not complete, and the researcher reasonably believes that access would harm the conduct of the trial.

(d) If an entity denies a request for inspection or copying pursuant to subsection (c), the entity shall inform the individual in writing of:

(1) The reasons for the denial of the request for inspection or copying;

(2) Any procedures for further review of the denial; and

(3) The individual's right to file with the entity a concise statement setting forth the request for inspection or copying.

(e) If an individual has filed a statement under subsection (d)(3), the entity in any subsequent disclosure of the portion of the information requested under subsection (b) shall include:

(1) A copy of the individual's statement; and

(2) A concise statement of the reasons for denying the request for inspection or copying.

(f) An entity shall permit the inspection and copying under subsection (b) of any reasonably segregable portion of a record after deletion of any portion that is exempt under subsection (c).

(g) An entity shall comply with or deny, in accordance with subsection (d), a request for inspection or copying of protected health information under this section not later than thirty days after the date on which the entity or agent receives the request.

(h) An agent of an entity shall not be required to provide for the inspection and copying of protected health information, except where:

(1) The protected health information is retained by the agent; and

(2) The agent has received in writing a request from the entity involved to fulfill the requirements of this section, at which time this information shall be provided to the individual. The agent shall comply with subsection (g) with respect to any such information.

(i) The entity shall afford at least one level of appeal by parties not involved in the original decision.

(j) This section shall not be construed to require that an entity described in subsection (a) conduct a formal, informal, or other hearing or proceeding concerning a request for inspection or copying of protected health information.

(k) If an entity denies an individual's request for copying pursuant to subsection (c), or if an individual so requests, the entity shall permit the inspection or copying of the requested protected health information by the individual's designated representative, upon presentation of a proper authorization signed by the individual, unless it is patently clear that doing so would defeat the purpose for which the entity originally denied the individual's request for inspection and copying.

§ **-12 Additions to protected health information.** A health care provider is the owner of the medical records in the health care provider's possession that were created by the health care provider in treating a patient. An individual or the individual's authorized representative may request in writing that a health care provider that generated certain health care information append additional information to the record in order to improve the accuracy or completeness of the information; provided that appending this information does not erase or obliterate any of the original information. A health care provider shall do one of the following:

(1) Append the information as requested; or

(2) Notify the individual that the request has been denied, the reason for the denial, and that the individual may file a statement of reasonable length explaining the correctness or relevance of existing information or as to

the addition of new information. The statement or copies shall be appended to the medical record and at all times accompany that part of the information in contention.

§ -13 **Notice of confidentiality practices; forms of notices.** (a) For the purposes of this section only, ''entity'' means health care provider, health care data organization, health plan, health oversight agency, public health authority, employer, insurer, health researcher, or educational institution.

(b) An entity shall prominently post or provide the current notice of the entity's confidentiality practices. The notice shall be printed in clear type and composed in plain language. This notice shall be given pursuant to the requirements of section -22. For the purpose of informing each individual of the importance of the notice and educating the individual about the individual's rights under this chapter, the notice shall contain the following language, placed prominently at the beginning:

> IMPORTANT: THIS NOTICE DEALS WITH THE SHARING OF INFORMATION FROM YOUR MEDICAL RECORDS. PLEASE READ IT CAREFULLY. This notice describes your confidentiality rights as they relate to information from your medical records and explains the circumstances under which information from your medical records may be shared with others. This information in this notice also applies to others covered under your health plan, such as your spouse or children. If you do not understand the terms of this notice, please ask for further explanation.

In addition, as shall be appropriate to the size and nature of the entity, the notice shall include information about:

(1) A description of an individual's rights with respect to protected health information which shall contain at a minimum, the following:
   (A) An individual's right to inspect and copy their record;
   (B) An individual's right to request that a health care provider append information to their medical record; and
   (C) An individual's right to receive this notice by each health plan upon enrollment, annually, and when confidentiality practices are substantially amended.

(2) The uses and disclosures of protected health information authorized under this chapter including information about:
   (A) Payment;
   (B) Conducting quality assurance activities or outcomes assessments;
   (C) Reviewing the competence or qualifications of health care professionals;
   (D) Performing accreditation, licensing, or credentialing activities;
   (E) Analyzing health plan claims or health care records data;
   (F) Evaluating provider clinical performance;
   (G) Carrying out utilization management; or
   (H) Conducting or arranged for auditing services in accordance with statute, rule or accreditation requirements;

(3) The right of the individual to limit disclosure of protected health information by deciding not to utilize any health insurance or other third party payment as payment for the service, as set forth in section -21(c);

(4) The procedures for giving consent to disclosures of protected health information and for revoking the consent to disclose;

(5) The description of procedures established by the entity for the exercise of the individual's rights required under this chapter; and

(6) The right to obtain a copy of the notice of confidentiality practices required under this chapter.

(b) The actual procedures established by the entities for the exercise of individual rights under this part shall be available in writing upon request.

§ **-14 Establishment of safeguards.** (a) An entity shall establish and maintain administrative, technical, and physical safeguards that are appropriate to the size and nature of the entity establishing the safeguards, and that are appropriate to protect the confidentiality, security, accuracy, and integrity of protected health information created, received, obtained, maintained, used, transmitted, or disposed of by the entity.

(b) The office of information practices shall adopt rules pursuant to chapter 91 to implement subsection (a).

PART III. RESTRICTIONS ON USE AND DISCLOSURE

§ **-21 General rules regarding use and disclosure.** (a) An entity shall not use or disclose protected health information except as authorized under this part and under part IV. Disclosure of health information in the form of nonidentifiable health information shall not be construed as a disclosure of protected health information.

(b) For the purpose of treatment or qualified health care operations, an entity may only use or disclose protected health information within the entity if the use or disclosure is properly noticed pursuant to sections -13 and -22. For all other uses and disclosures, an entity may only use or disclose protected health information, if the use or disclosure is properly consented to pursuant to section -23. Disclosure to agents of an entity described in subsection (a) shall be considered as a disclosure within an entity.

(c) If an individual does not want protected health information released pursuant to section (b), the individual shall advise the provider prior to the delivery of services that the relevant protected health information shall not be disclosed pursuant to subsection (b), and the individual shall pay the health care provider directly for health care services. A health plan may decline to cover particular health care services if an individual has refused to allow the release of protected health care information pertaining to those particular health care services. Protected health information related to health care services paid for directly by the individual shall not be disclosed without a consent.

(d) An agent who receives protected health information from an entity shall be subject to all rules of disclosure and safeguard requirements under this part.

(e) Every use and disclosure of protected health information shall be limited to the purpose for which it was collected. Any other use without a valid consent to disclose shall be an unauthorized disclosure.

(f) Nothing in this part permitting the disclosure of protected health information shall be construed to require disclosure.

(g) An entity may disclose protected health information to an employee or agent of the entity not otherwise authorized to receive such information for purposes of creating nonidentifiable information, if the entity prohibits the employee or agent of the entity from using or disclosing the protected health information for purposes other than the sole purpose of creating nonidentifiable information, as specified by the entity.

(h) Any individual or entity who manipulates or uses nonidentifiable health information to identify an individual, shall be deemed to have disclosed protected health information. The disclosure or transmission of a unique patient identifier shall be deemed to be a disclosure of protected health information.

§ -22 **Giving notice regarding disclosure of protected health information for treatment or qualified health care operations.** (a) The notice required by section -13 shall be:

(1) Given by each health plan upon enrollment, annually, and when confidentiality practices are substantially amended, to each individual who is eligible to receive care under the health plan, or to the individual's parent or guardian if the individual is a minor or incompetent; and

(2) Posted in a conspicuous place or provided by an entity other than a health plan.

(b) For each new enrollment or re-enrollment by an individual in a health plan, on or after the effective date of this Act, a health plan shall make reasonable efforts to obtain the individual's signature on the notice of confidentiality practices. The notice to be signed shall state that the individual is signing on behalf of the individual and all others covered by the individual's health plan. If the plan is unable to obtain the aforementioned signature, the plan shall note the reason for the failure to obtain said signature. The lack of a signed notice of confidentiality practices shall not justify a denial of coverage of a claim, nor shall it limit a health plan's access to information necessary for treatment and qualified health care operations; provided that the individual may elect to keep the records from being disclosed by paying for the subject health care services, as provided under section -21(c).

(c) Except as provided in this chapter, the notice required by this section and section -13 shall not be construed as a waiver of any rights that the individual has under other federal or state laws, rules of evidence, or common law.

(d) For the purposes of this subsection, ''reasonable efforts'' may include but are not limited to requiring the employer to present the notice to the individual and to request a signature, or mailing the notice to the individual with instructions to sign and return the notice within a specified period of time.

§ -23 **Authorization to disclose protected health information other than for treatment, payment, or qualified health care operations.** (a) An entity may disclose protected health information for purposes other than those noticed under section -22, pursuant to a separate written authorization to disclose executed by the individual who is the subject of the information. The authorization must meet the requirements of subsection (b).

(b) To be valid, an authorization shall be separate from any other notice or authorization required by this part, shall be either in writing, dated, and signed by the individual, or in electronic form, dated, and authenticated by the individual using a unique identifier, shall not have been revoked, and shall do the following:

(1) Identify the person or entity authorized to disclose protected health information;

(2) Identify the individual who is the subject of the protected health information;

(3) Describe the nature of and the time span of the protected health information to be disclosed;

(4) Identify the person to whom the information is to be disclosed;

(5) Describe the purpose of the disclosure;

(6) State that it is subject to revocation by the individual and indicate that the consent to disclose is valid until revocation by the individual; and

(7) Include the date at which the consent to disclose ends.

(c) An individual may revoke in writing an authorization under this section at any time. An authorization obtained by a health plan under this section is deemed to be revoked at the time of the cancellation or nonrenewal of enrollment in the health plan. An entity that discloses protected health information pursuant to an authorization that has been revoked under this subsection shall not be subject to any liability

or penalty under this part for the disclosure if that entity acted in good faith and had no actual or constructive notice of the revocation.

(d) Sections -31 to -39 provide for exceptions to the requirement for the authorization.

(e) A recipient of protected health information pursuant to an authorization under this section may use the information solely to carry out the purpose for which the information was authorized for release.

(f) Each entity collecting or storing protected health information shall maintain for seven years, as part of an individual's protected health information, a record of each authorization by the individual and any revocation of authorization by the individual.

PART IV. EXCEPTED USES AND DISCLOSURES

§ **-31 Coroner or medical examiner.** When a coroner or medical examiner or one of their duly appointed deputies seek protected health information for the purpose of inquiry into and determination of the cause, manner, and circumstances of a death, any person shall provide the requested protected health information to the coroner or medical examiner or to the duly appointed deputies without undue delay. If a coroner or medical examiner or their duly appointed deputies receives protected health information, this protected health information shall remain protected health information unless it is attached to or otherwise made a part of a coroner's or medical examiner's official report. Health information attached to or otherwise made a part of a coroner's or medical examiner's official report shall be exempt from this chapter.

§ **-32 Individual's designated representative, relative, or surrogate, and directory information.** (a) A health care provider, or a person who receives protected health information under subsection (b), may disclose protected health information regarding an individual to an individual's designated representative, relative, or surrogate if:

(1) The individual who is the subject of the information:
   (A) Has been notified of the individual's right to object to the disclosure and the individual has not objected to the disclosure; or
   (B) Is in a physical or mental condition such that the individual is not capable of objecting, and there are no prior indications that the individual would object; and
(2) The information disclosed is for the purpose of providing health care to that individual; or
(3) The disclosure of the protected health information is consistent with good medical or professional practice.

(b) Except as provided in subsection (d), a health care provider may disclose the information described in subsection (c) to any other person if the individual who is the subject of the information:

(1) Has been notified of the individual's right to object and the individual has not objected to the disclosure; or
(2) Is in a physical or mental condition such that the individual is not capable of objecting; and
   (A) The individual's designated representative, relative, or surrogate has not objected; and
   (B) There are no prior indications that the individual would object.

(c) Information that may be disclosed in subsection (b) is only that information that consists of any of the following items:

(1) The name of the individual who is the subject of the information;
(2) The general health status of the individual, described as critical, poor, fair, stable, or satisfactory or in terms denoting similar conditions; or
(3) The location of the individual on premises controlled by a provider. This disclosure shall not be made if the information would reveal specific information about the physical or mental condition of the individual, unless the individual expressly authorizes the disclosure.

(d) A disclosure shall not be made under this section if the health care provider involved has reason to believe that the disclosure of this information could lead to physical or mental harm to the individual, unless the individual expressly authorizes the disclosure.

§ -33 **Identification of deceased individuals.** A health care provider may disclose protected health information if the disclosure is necessary to assist in the identification or safe handling of a deceased individual.

§ -34 **Emergency circumstances.** Any person who creates or receives protected health information under this chapter may use or disclose protected health information in emergency circumstances when the use or disclosure is necessary to protect the health or safety of the individual who is the subject of the information from serious, imminent harm. A disclosure made in the good faith belief that the use or disclosure was necessary to protect the health or safety of an individual from serious, imminent harm shall not be a violation of this chapter.

§ -35 **Disclosures for health oversight.** (a) Any person may disclose protected health information to a health oversight agency for purposes of an oversight function authorized by law.

(b) For purposes of this section, the individual with authority to authorize the health oversight function involved shall provide to the person described in subsection (a) a statement that the protected health information is being sought for a legally authorized oversight function.

(c) Protected health information about an individual that was obtained under this section may not be used in, or disclosed to any person for use in, an administrative, civil, or criminal action or investigation directed against the individual unless the action or investigation arises out of and is directly related to:
(1) The receipt of health care or payment for health care;
(2) An action involving a fraudulent claim related to health; or
(3) An action involving oversight of a public health authority or a health researcher.

(d) Protected health information disclosed for purposes of this section remains protected health information and shall not be further disclosed by the receiving health oversight agency, except as permitted under this section.

§ -36 **Public health.** (a) Any person or entity may disclose protected health information to a public health authority or other person authorized by law, for use in a legally authorized:
(1) Disease or injury report;
(2) Public health surveillance;
(3) Public health investigation or intervention; or
(4) Health or disease registry.

(b) The disclosure of protected health information, pursuant this section, to a public health authority or other person authorized by law shall not be a violation of this part.

(c) Protected health information disclosed for purposes of this section remains protected health information and shall not be further disclosed by the receiving authority or person, except as permitted under this section.

§ -37 **Health research.** (a) A health care provider, health plan, public health authority, employer, insurer, or educational institution may disclose protected health information to a health researcher if the following requirements are met:

(1) The research shall have been approved by an institutional review board. In evaluating a research proposal, an institutional review board shall require that the proposal demonstrate a clear purpose, scientific integrity, and a realistic plan for maintaining the confidentiality of protected health information;

(2) The health care provider, health plan, public health authority, employer, insurer, or educational institution shall only disclose protected health information which it has previously created or collected; and

(3) The holder of protected health information shall keep a record of all health researchers to whom protected health information has been made available.

(b) A health researcher who receives protected health information shall remove and destroy, at the earliest opportunity consistent with the purposes of the project involved, any information that would enable an individual to be identified.

(c) A health researcher who receives protected health information shall not disclose or use the protected health information for any purposes obtained, except that the health researcher may disclose the information pursuant to section -35(a).

§ -38 **Disclosure in civil, judicial, and administrative procedures.** (a) Protected health information may be disclosed pursuant to a discovery request or subpoena in a civil action brought in a state court or a request or subpoena related to a state administrative proceeding, only if the disclosure is made pursuant to a court order as provided for in subsection (b) or to a written authorization under section -23.

(b) A court order issued under this section shall:

(1) Provide that the protected health information involved is subject to court protection;

(2) Specify to whom the information may be disclosed;

(3) Specify that the information may not otherwise be disclosed or used; and

(4) Meet any other requirements that the court determines are needed to protect the confidentiality of the information.

(c) This section shall not apply in a case in which the protected health information sought under the discovery request or subpoena is:

(1) Nonidentifiable health information; and

(2) Related to a party to the litigation whose medical condition is at issue.

(d) The release of any protected health information under this section shall not violate this part.

§ -39 **Disclosure for civil or administrative law enforcement purposes.** (a) For the purposes of this subsection only, "entity" means a health care provider, health plan, health oversight agency, employer, insurer, and educational institution.

(b) Except as to disclosures to a health oversight agency, which are governed by section -35, an entity or person who receives protected health information pursuant to sections -23 and -31 through -37, may disclose protected health information under this section, if the disclosure is pursuant to:

(1) An administrative subpoena or summons or judicial subpoena;

(2) Consent in accordance with section -23; or
(3) A court order.

(c) A subpoena or summons for a disclosure under subsection (b)(1) shall only be issued if the civil or administrative law enforcement agency involved shows that there is probable cause to believe that the information is relevant to a legitimate law enforcement inquiry.

(d) When the matter or need for which protected health information was disclosed to a civil or administrative law enforcement agency under subsection (b) has concluded, including any derivative matters arising from the matter or need, the civil or administrative law enforcement agency shall either destroy the protected health information, or return all of the protected health information to the person from whom it was obtained.

(e) To the extent practicable, and consistent with the requirements of due process, a civil or administrative law enforcement agency shall redact personally identifying information from protected health information prior to the public disclosure of the protected information in a judicial or administrative proceeding.

(f) Protected health information obtained by a civil or administrative law enforcement agency pursuant to this section may only be used for purposes of a legitimate law enforcement activity.

(g) If protected health information is obtained without meeting the requirements of subsection (b)(1), (2), or (3), any information that is unlawfully obtained shall be excluded from court proceedings unless the defendant requests otherwise.

§ **-40 Payment card and electronic payment transaction.** (a) If an individual pays for health care by presenting a debit, credit, or other payment card or account number, or by any other electronic payment means, the entity receiving payment may disclose to a person described in subsection (b) only such protected health information about the individual as is necessary for the processing of the payment transaction or the billing or collection of amounts charged to, debited from, or otherwise paid by, the individual using the card, number, or other electronic means.

(b) A person who is a debit, credit, or other payment card issuer, or is otherwise directly involved in the processing of payment transactions involving such cards or other electronic payment transactions, or is otherwise directly involved in the billing or collection of amounts paid through these means, may use or disclose protected health information about an individual that has been disclosed in accordance with subsection (a) only when necessary for:

(1) The settlement, billing, or collection of amounts charged to, debited from, or otherwise paid by the individual using a debit, credit, or other payment card or account number, or by other electronic payment means;
(2) The transfer of receivables, accounts, or interest therein;
(3) The internal audit of the debit, credit, or other payment card account information;
(4) Compliance with federal, state, or county law; or
(5) Compliance with a properly authorized civil, criminal, or regulatory investigation by federal, state, or county authorities as governed by the requirements of this section.

§ **-41 Standards for electronic disclosures.** The office of information practices shall adopt rules to establish standards for disclosing, authorizing, and authenticating, protected health information in electronic form consistent with this part.

§ -42 **Rights of minors.** (a) In the case of an individual who is eighteen years of age or older, all rights of an individual under this chapter shall be exercised by the individual.

(b) In the case of an individual of any age who, acting alone, can obtain a type of health care without violating any applicable federal or state law, and who has sought this care, the individual shall exercise all rights of an individual under this chapter with respect to health care.

(c) Except as provided in subsection (b), in the case of an individual who is:

(1) Under fourteen years of age, all of the individual's rights under this chapter shall be exercised only through the parent or legal guardian; or

(2) At least fourteen but under eighteen years of age, the rights of inspection and amendment, and the right to authorize use and disclosure of protected health information of the individual may be exercised by the individual, or by the parent or legal guardian of the individual. If the individual and the parent or legal guardian do not agree as to whether to authorize the use or disclosure of protected health information of the individual, the individual's authorization or revocation of authorization shall control.

§ -43 **Deceased individuals.** This chapter shall continue to apply to protected health information concerning a deceased individual following the death of that individual. A person who is authorized by law or by an instrument recognized under law, to act as a personal representative of the estate of a deceased individual, or otherwise to exercise the rights of the deceased individual, to the extent so authorized, may exercise and discharge the rights of the deceased individual under this chapter.

PART V. SANCTIONS

§ -51 **Wrongful disclosure of protected health information.** (a) A person who knowingly or intentionally obtains protected health information relating to an individual or discloses protected health information to another person in violation of this chapter shall be guilty of a class C felony.

(b) A person who knowingly or intentionally sells, transfers, or uses protected health information for commercial advantage, personal gain, or malicious harm, in violation of this chapter shall be guilty of a class B felony.

§ -52 **Civil actions by individuals.** (a) Any individual whose rights under this chapter have been violated may bring a civil action against the person or entity responsible for the violation.

(b) In any civil action brought under this section, if the court finds a violation of an individual's rights under this chapter, the court may award:

(1) Injunctive relief, including enjoining a person or entity from engaging in a practice that violates this chapter;

(2) Equitable relief;

(3) Compensatory damages for injuries suffered by the individual. Injuries compensable under this section may include, but are not limited to, personal injury including emotional distress, reputational injury, injury to property, and consequential damages;

(4) Punitive damages, as appropriate;

(5) Costs of the action;

(6) Attorneys' fees, as appropriate; and

(7) Any other relief the court finds appropriate.

(c) No action may be commenced under this section after the time period stated in section 657-7.

§ **-53 Cease and desist orders; civil penalty.** (a) A court shall issue and cause to be served upon a person, who has violated any provision of this chapter, a copy of the court's findings and an order requiring the person to cease and desist from violating this chapter, or to otherwise comply with the requirements of this chapter. The court may also order any one or more of the following:

(1) For any violation of this chapter, payment of a civil penalty of not more than $500 for each and every act or violation but not to exceed $5,000 in the aggregate for multiple violations;

(2) For a knowing violation of this chapter, payment of a civil penalty of not more than $25,000 for each and every act or violation but not to exceed $100,000 in the aggregate for multiple violations; and

(3) For violations of this chapter that have occurred with such frequency as to constitute a general business practice, a civil penalty of $100,000.

(b) Any person who violates a cease and desist order or injunction issued under this section may be subject to a civil penalty of not more than $10,000 for each and every act in violation of the cease and desist order.

(c) No order or injunction issued under this section shall in any way relieve or absolve any person affected by the order from any other liability, penalty, or forfeiture required by law.

(d) Any civil penalties collected under this section shall be deposited into the general fund.

§ **-54 Prevention and deterrence.** To promote the prevention and deterrence of acts or omissions that violate laws designed to safeguard the protected health information in a manner consistent with this chapter, the director of the office of information practices, with any other appropriate individual, organization, or agency, may provide advice, training, technical assistance, and guidance regarding ways to prevent improper disclosure of protected health information.

§ **-55 Relationship to other laws.** (a) Nothing in this chapter shall be construed to preempt or modify any provisions of state law concerning a privilege of a witness or person in a court of the State. Receipt of notice pursuant to section -22 or consent to disclose pursuant to section -23 shall not be construed as a waiver of these privileges.

(b) Nothing in this chapter shall be construed to preempt, supersede, or modify the operation of any state law that:

(1) Provides for the reporting of vital statistics such as birth or death information;

(2) Requires the reporting of abuse or neglect information about any individual;

(3) Relates to public or mental health and that prevents or otherwise restricts disclosure of information otherwise permissible under this chapter, except that if this chapter is more protective of information, it shall prevail;

(4) Governs a minor's right to access protected health information or health care services; or

(5) Meets any other requirements that the court determines are needed to protect the confidentiality of the information.''

SECTION 3. Section 334-5, Hawaii Revised Statutes, is amended to read as follows:

"**§334-5 Confidentiality of records.** All certificates, applications, records, and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except so far as:

(1) [as the] The person identified, or the person's legal guardian, consents[, or];[1]

(2) [as disclosure] Disclosure may be deemed necessary by the director of health or by the administrator of a private psychiatric or special treatment facility to carry out this chapter[, or];[1]

(3) [as a] A court may direct upon its determination that disclosure is necessary for the conduct of[2] proceedings before it and that failure to make the disclosure would be contrary to the public interest[, or][2]

(4) [as disclosure] Disclosure may be deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, to protect and advocate the rights of persons with mental illness who reside in facilities providing treatment or care[.]; or

(5) Disclosure is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall be limited to the information necessary to effectuate reimbursement and facilitate other qualified health care operations as defined in chapter ; provided further that disclosure shall not be made if, after being informed that a claim will be made to an insurer, the patient refuses to consent to the disclosure after being afforded the opportunity to make reimbursement and by actually making direct reimbursement.

For the purposes of this section, "facilities" shall include, but not be limited to, hospitals, nursing homes, community facilities for mentally ill individuals, boarding homes, and care homes.

Nothing in this section shall preclude disclosure, upon proper inquiry, of any information relating to a particular patient and not clearly adverse to the interests of the patient, to the patient, the patient's family, legal guardian, or relatives, nor, except as provided above, affect the application of any other rule or statute of confidentiality. The use of the information disclosed shall be limited to the purpose for which the information was furnished."

SECTION 4. Section 622-52, Hawaii Revised Statutes, is amended to read as follows:

"**§622-52 Subpoena duces tecum for medical records, compliance.** (a) [Whenever a subpoena duces tecum is served upon the custodian of medical records or other qualified witness from a medical facility, in an action or other proceeding on a claim for personal injuries in which the custodian or the custodian's employer is neither a party to the action or proceeding nor is it alleged that the claim arose at the medical facility, and such subpoena requires the production in court, or before an officer, board, commission, or tribunal, of all or any part of the medical records of a patient who is or has been cared for or treated at the medical facility, it shall be sufficient compliance therewith if the custodian or other qualified witness within five days after receipt of such subpoena, delivers by registered or certified mail or by messenger a true and correct copy (which may be by any method described in rule 1001(4), Hawaii rules of evidence) of all the medical records described in such subpoena to the clerk of the court or the clerk's deputy authorized to issue it, together with the affidavit described in section 622-53.] A subpoena duces tecum or discovery request for protected health information is valid only if accompanied by either a court order, or a written authorization signed in accordance with section -23. An order issued under this section shall:

(1) Provide that the protected health information involved is subject to court protection;
(2) Specify to whom the information may be disclosed;
(3) Specify that the information may not be disclosed or used except as provided in the order; and
(4) Meet any other requirements that the court determines are needed to protect the confidentiality of the information.

(b) Whenever a subpoena duces tecum is served upon the custodian of medical records or other qualified witness from a health care provider, health plan, public health authority, employer, insurer, law enforcement official, educational institution, health oversight agency, health researcher, or medical facility, in a civil action or other proceeding in which the custodian or the custodian's employer is neither a party to the action or proceeding nor is it alleged that the claim arose at the office, facility, or institution to which the request for information is directed, and such subpoena requires the production in court, or before an officer, board, commission, or tribunal, of all or any part of the medical records of a patient who is or has been cared for or treated at the office, facility, or institution, it shall be sufficient compliance if the custodian or other qualified witness within five days after receipt of such subpoena, delivers by registered or certified mail or by messenger, a true and correct copy (which may be by any method described in rule 1001(4), Hawaii Rules of Evidence), of all the medical records described in such subpoena to the clerk of the court or the clerk's deputy authorized to issue it, together with the affidavit described in section 622-53.

[(b)] (c) The copy of the medical records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of the custodian or other qualified witness, and date of the subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of such court or the clerk's deputy authorized to issue it, at the courthouse[.];[1] and
(2) In other cases, to the officer, board, commission, or tribunal conducting the hearing, at the place designated in the subpoena.

[(c)] (d) The copy of the medical records shall remain sealed and shall be opened only at the time of trial, or other hearing, upon the direction of the judge, officer, board, commission, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, or hearing, unless the parties or counsel in the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to the custodian or other qualified witness who is to appear personally. Copies of medical records [which] that are not introduced in evidence or required as part of the record shall be returned by registered or certified mail or by messenger to the person or entity from whom received. If the copies of the medical records are introduced in evidence or are required as part of the record, they shall be returned by registered or certified mail or messenger to the person or entity from whom received as soon as their use is no longer needed, after the trial, or other hearing.

(e) This section shall not be construed to supercede any grounds that may apply under federal or state law for objecting to turning over the protected health information."

SECTION 5. The office of information practices shall submit a status report to the legislature on the adoption of rules required by this Act and regarding existing licensure, certification, and regulatory mechanisms for the imposition of sanctions or penalties for the wrongful disclosure of protected health information, no later than twenty days prior to the convening of the 2000 regular session.

SECTION 6. Life insurers, disability income insurers, and long-term care insurers regulated under article 10A of chapter 431, and property and casualty insurers shall submit to the legislature a report and recommendations for proposed legislation governing the treatment of protected health information, including but not limited to the National Association of Insurance Commissioners Insurance Information and Privacy Protection Act, or substantially similar legislation, no later than twenty days prior to the convening of the 2000 regular session.

SECTION 7. The legislative reference bureau shall conduct a study to determine the most appropriate method by which this Act may be implemented and enforced. The legislative reference bureau shall consider, but not limit its consideration of agencies to the insurance division and the regulated industries complaints office of the department of commerce and consumer affairs, and the office of information practices, and shall also propose and evaluate cooperative arrangements between agencies. The factors to be considered by the legislative reference bureau in conducting its study shall include but not be limited to:

(1) Experience and expertise in the area to be regulated;
(2) Ability to work cooperatively with regulated entities, and to educate entities as to the requirements under this Act;
(3) Independence and neutrality of the agency with regard to its relationship with regulated entities;
(4) Existing agency resources; and
(5) Experience and expertise of the agency in conducting enforcement activities.

The legislative reference bureau shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given affect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2000; provided that sections 5, 6, and 7 shall take effect upon its approval.

(Approved June 23, 1999.)

Notes

1. Semicolon should be underscored.
2. So in original.

ACT 88 H.B. NO. 547

A Bill for an Act Relating to Anatomical Gifts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there exists in the State a shortage of organ and tissue donors to provide the organs and tissues that could save lives or enhance the quality of life for many persons. There are many more patients on the

waiting list for a kidney, liver, heart, lung, or other solid organs than there are donated organs. As a result, many patients die before they can be given a second chance at life.

The legislature further finds that particular difficulties exist in making members of various minority groups aware of the need for anatomical gifts. For various reasons minorities appear to be at increased risk to suffer illnesses, such as diabetes, which destroy healthy organs and require replacement. The chances of finding a good organ match is increased if the donor is of the same ethnic group as the transplant recipient. Minority ethnic groups must be educated in the great need among their own people for anatomical gifts. The legislature finds that more education and discussion among families are necessary to encourage organ donation.

The legislature finds and declares that public support of education on organ, tissue, and eye donation is in the public's interest and for the public health, safety, and general welfare.

The legislature finds that the Hawaii Organ Procurement Organization d.b.a. Organ Donor Center of Hawaii is a nonprofit and tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. It was incorporated on July 16, 1987, to "perform or coordinate the performance of retrieving, preserving and locating prospective recipients for available organs." This work includes evaluating potential donors, presenting the option of donation to families, providing medical management to donors, and placing organs according to nationally established criteria. The Health Care Financing Administration (HCFA) has designated it as the "organ procurement organization" under Section 1138 of the Social Security Act for the State of Hawaii. Further, the legislature finds that the Organ Donor Center of Hawaii meets the requirements of a grant recipient under section 42F-103, Hawaii Revised Statutes, and that a grant to the Organ Donor Center of Hawaii to conduct public education programs and activities on organ, tissue, and eye donation is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to increase the number of individuals being asked to donate organs, to expand educational efforts across all ethnic, religious, and age groups, to increase the supply of organs for waiting transplant recipients, and to create a special fund which will be used to promote public education programs on organ, tissue, and eye donation.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§286-A Organ and tissue education fee.** Notwithstanding any other law to the contrary, beginning July 1, 2000, a donation of $1, in addition to any other fees under this chapter, may be collected upon designation by an individual or entity from each certificate of registration by the director of finance of each county to be deposited on a quarterly basis into the Hawaii organ and tissue education special fund pursuant to section 327-B. The counties may retain a portion of the $1 donation as an administrative fee to cover the cost of collecting, accounting for, and depositing the balance into the organ and tissue education special fund. The retention shall not exceed $0.20 for each $1 collected.

§286-B Limited access to driver's license anatomical gift data. The examiner of drivers shall adopt rules pursuant to chapter 91 to allow an organ procurement organization twenty-four-hour telephone access to the driver's license database information, solely for the purpose of determining whether a driver has indicated a willingness to be an organ donor pursuant to section 286-109.5.

As used in this section, "organ procurement organization" shall have the same meaning as procurement organization in section 327-1."

SECTION 3. Chapter 327, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§327-A Required referral.** (a) On or before the occurrence of each death in an acute care hospital, the hospital shall report to the local organ procurement organization to determine the suitability of the individual for organ, tissue, and eye donation. This contact shall be noted on the patient's medical record.

(b) Each acute care hospital shall develop no later than July 1, 2000, with the concurrence of the hospital medical staff, a protocol for identifying potential organ and tissue donors. The protocol shall require that at or near the time of every individual death, the acute care hospital shall contact by telephone the local organ procurement organization to determine suitability for organ, tissue, and eye donation of the individual. Each hospital shall designate a person to contact the local organ procurement organization to provide the appropriate data about the individual necessary to begin assessment for suitability for recovery of anatomical gifts. The acute care hospital's protocol shall specify the kind of information that shall be available prior to making the contact, including the patient's age and cause of death.

The local organ procurement organization, in consultation with the patient's attending physician or designee, shall determine the suitability for donation. If the local organ procurement organization in consultation with the patient's attending physician or designee determines that donation is not appropriate based on established medical criteria, this shall be noted by the hospital personnel on the patient's record, and no further action shall be necessary. If the local organ procurement organization in consultation with the patient's attending physician or designee determines that the patient is a suitable candidate for anatomical donation, the acute care hospital and the local organ procurement organization, separately or together, shall initiate a request by a designated requester, who shall be a person trained by the local organ procurement organization. The protocol shall encourage discretion and sensitivity to family circumstances in all discussions regarding donations of tissue or organs. The protocol shall take into account the deceased individual's religious beliefs or nonsuitability for organ and tissue donation.

(c) The local organ procurement organization shall conduct annual death record reviews at each acute care hospital to determine compliance with required referral. There shall be no cost assessed against a hospital for a review of death records pursuant to this subsection.

(d) As used in this section:

"Acute care hospital" means a hospital, as defined in section 327-1, other than a nursing facility or other long-term care facility.

"Designated requester" means a person who has completed a course offered by an organ procurement organization on how to approach families and request organ or tissue donation.

"Organ procurement organization" shall have the same meaning as procurement organization in section 327-1.

§327-B Hawaii organ and tissue education special fund. There is established in the state treasury the Hawaii organ and tissue education special fund. Moneys collected under section 286-A shall be deposited into the fund. The fund shall be administered and distributed by the department of health and shall be used exclusively for public education programs and activities on organ, tissue, and eye donation."

SECTION 4. Chapter 327, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (h) of section 327-2 to read:

"(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

Any person, hospital, or organization that relies on the document of gift and acts in good faith in accordance with this chapter shall not be subject to criminal or civil liability from any action taken under this chapter. The immunity provided by this subsection shall not extend to the person, hospital, or organization if damages result from the gross negligence, recklessness, or intentional misconduct to the donor."

2. By repealing section 327-5.

"SECTION 5. The department of health, with the assistance of the Organ Donor Center of Hawaii, shall report to the legislature no later than twenty days prior to the convening of the regular session of 2003, on the deposits and disbursements of the Hawaii organ and tissue education special fund and on the effectiveness of that fund in achieving its purposes."

SECTION 6. There is appropriated out of the organ and tissue education special fund for fiscal year 2000-2001 the sum of $250,000. The sum appropriated shall be expended by the department of health as a grant to the Organ Donor Center of Hawaii for the purposes set forth in section 327-B, Hawaii Revised Statutes.

SECTION 7. In codifying the new sections added to chapters 286 and 327, Hawaii Revised Statutes, by sections 2 and 3 of this Act, and referred to in this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections' designations in this Act.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 9. This Act shall take effect upon its approval; provided that the new sections designated as 286-A and 327-B, Hawaii Revised Statutes, in this Act shall take effect on July 1, 2000, and shall be repealed on June 30, 2003.

(Approved June 23, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 89

S.B. NO. 829

A Bill for an Act Relating to the Hawaii Rules of Evidence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to conform the Hawaii rules of evidence in civil cases to the current rape shield laws with respect to sex offense cases and the relevance of the victim's past behavior (rule 412). The legislature finds that this Act is necessary to provide further protection for women and children who are the victims of sexual offenses or sexual harassment.

SECTION 2. Section 626-1, Hawaii Revised Statutes, is amended by amending rule 412 to read as follows:

"Rule 412 Sexual [assault] offense and sexual harassment cases; relevance of victim's past behavior. (a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sexual [assault,] offense, reputation or opinion evidence of the past sexual behavior of an alleged victim of [such] the sexual [assault] offense is not admissible to prove the character of the victim [in order] to show action in conformity therewith.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sexual [assault,] offense, evidence of an alleged victim's past sexual behavior other than reputation or opinion evidence is not admissible to prove the character of the victim [in order] to show action in conformity therewith, unless [such] the evidence is:

(1) Admitted in accordance with subsection (c)(1) and (2) and is constitutionally required to be admitted; or

(2) Admitted in accordance with subsection (c) and is evidence of:

(A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which sexual assault is alleged.

(c)(1) If the person accused of committing a sexual [assault] offense intends to offer under subsection (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer [such] the evidence not later than fifteen days before the date on which the trial in which [such] the evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which [such] the evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (b), the court shall order a hearing in chambers to determine if [such] the evidence is admissible. At [such] the hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subsection (b) of rule 104, if the relevancy of the evidence [which] that the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for [such] this purpose, shall accept evidence on the issue of whether [such] the condition of fact is fulfilled and shall determine [such] the issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence [which] that the accused seeks to offer is relevant and that the probative value of [such] the evidence outweighs the danger of unfair prejudice, [such] the evidence shall be admissible in the trial to the extent an order made by the court specifies evidence [which] that may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) In any civil action alleging conduct which constitutes a sexual offense or sexual harassment, opinion evidence, reputation evidence, and evidence of specific instances of plaintiff's sexual conduct, or any of such evidence, is not admissible by the defendant to prove consent by the plaintiff or the absence of injury to the plaintiff, unless the injury alleged by the plaintiff is in the nature of loss of consortium.

(e) Subsection (d) shall not be applicable to evidence of the plaintiff's sexual conduct with the alleged perpetrator.

(f) In a civil action alleging conduct which constitutes a sexual offense or sexual harassment, if the plaintiff introduces evidence, including testimony of a witness, or the plaintiff as a witness gives testimony, and the evidence or testimony relates to the plaintiff's sexual conduct, the defendant may cross-examine the witness who gives the testimony and offer relevant evidence limited specifically to the rebuttal of the evidence introduced by the plaintiff or given by the plaintiff.

(g) Nothing in subsections (d), (e) or (f) shall be construed to make inadmissible evidence offered to attack the credibility of the plaintiff.

[(d)] (h) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which a sexual [assault] offense or sexual harassment is alleged."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 23, 1999.)

ACT 90 S.B. NO. 40

A Bill for an Act Relating to Physician Assistants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"'"Physician assistant" means a person licensed under section 453-5.3, who is registered under this chapter to administer, prescribe, or dispense a controlled substance under the authority and supervision of a physician registered under section 329-33, but who is not authorized to request, receive, or sign for professional controlled substance samples.

"Supervising physician" means a physician licensed to practice medicine in the State and registered under section 329-33, who supervises a physician assistant and retains full professional and legal responsibility for the performance of the supervised physician assistant and the care and treatment of the patient."

SECTION 2. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Prescriptions for controlled substances shall be issued only as follows:

(1) All prescriptions for controlled substances shall be dated as of, and signed on, the day when the prescriptions were issued and shall bear:
(A) The full name and address of the patient; and
(B) The name, address, and registration number of the practitioner.
A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or by typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all essential respects to this chapter and any rules adopted pursuant to this chapter. A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section;

(2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:
(A) The registration number of the hospital or other institution; and
(B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.
Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician; [and]

(3) An official exempted from registration shall include on all prescriptions issued by the official:
(A) The official's branch of service or agency (e.g., ''U.S. Army'' or ''Public Health Service''); and
(B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee shall be the employee's Social Security identification number.
Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer[.]; and

(4) A physician assistant registered to prescribe controlled substances under the authorization of a supervising physician shall include on all prescriptions issued:
(A) The DEA registration number of the supervising physician; and
(B) The special code number assigned to the physician assistant by the department.
Each written prescription issued shall include the printed, stamped, typed, or hand-printed name, address, and phone number of both the supervising physician and physician assistant, and shall be signed by the physician assistant. The medical record of each written prescription issued by a physician assistant shall be reviewed and initialed by the physician assistant's supervising physician within seven working days.''

SECTION 3. Section 453-5.3, Hawaii Revised Statutes, is amended to read as follows:

"**§453-5.3 Physician assistant; [certification] licensure required.** (a) The board of medical examiners shall require each person practicing medicine under the supervision of a physician, other than a person licensed under section 453-3, to be [certified] licensed as a physician assistant. A person who is trained to do only a very limited number of diagnostic or therapeutic procedures under the direction of a physician shall not be deemed a practitioner of medicine and therefore does not require [certification] licensure under this section.

(b) The board shall establish medical educational and training standards with which a person applying for [certification] licensure as a physician assistant shall comply. The standards shall be at least equal to recognized national education and training standards for physician assistants.

(c) Upon satisfactory proof of compliance with the required medical educational and training standards, the board may grant state [certification] licensure to a person who has been granted certification based upon passage of a national certifying examination and who holds a current certificate from the national certifying entity approved by the board.

(d) The board shall approve temporary [certification] licensure of an applicant under this section. The applicant shall have graduated from a board approved training program within twelve months of the date of application and never taken a national certifying examination approved by the board but otherwise meet the requirements of this section. The applicant shall file a complete application with the board and pay all required fees. If the applicant fails to apply for, or to take, the first examination scheduled by the board following the issuance of the temporary [certificate,] license, fails to pass the examination, or fails to receive [certification,] licensure, all privileges under this section shall automatically cease upon written notification sent to the applicant by the board. A temporary [certificate] license shall be issued only once to each person.

(e) Prior to practicing under temporary [certification,] licensure, holders of temporary [certificates] licenses shall notify the board in writing of any and all supervising physicians under whom they will be performing services.

(f) The board shall establish the degree of supervision required by the supervising physician when a physician assistant performs a service within the practice of medicine. A physician who does not supervise a physician assistant's services at the degree required by the board shall be deemed to have engaged in professional misconduct.

(g) Any [certification] license of a physician assistant may be denied, not [recertified,] renewed, revoked, limited, or suspended under section 453-8.

(h) The board shall establish the application procedure, medical educational and training standards, examination requirement, if any, and degrees of supervision by rule.

(i) Every person holding a [certificate] license under this section shall apply for [recertification] renewal with the board no later than January 31 of each even-numbered year and pay a renewal fee. Failure to apply for [recertification] renewal shall constitute a forfeiture of the [certificate which] license that may only be restored upon written application for [recertification] restoration and payment to the board of a restoration fee.

(j) A [certificate] license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored. A new application for [certification] licensure shall be required."

SECTION 4. Section 453-5.4, Hawaii Revised Statutes, is amended to read as follows:

"[[]§453-5.4[]] **Physician assistant advisory committee.** There shall be a physician assistant advisory committee under the board of medical examiners consisting solely of persons [certified] licensed under section 453-5.3. The committee shall review all complaints and requests relating to physician assistants, and review and recommend revisions of the physician assistant regulations.

The chairperson of the committee shall be the representative for the committee members to the board of medical examiners for the purpose of providing input to the board from the physician assistant's perspective on issues and concerns, including complaints and requests, regarding physician assistants. The chairperson shall not be a member of the board of medical examiners to avoid conflict of interests."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 23, 1999.)

ACT 91 H.B. NO. 100

A Bill for an Act Relating to the State Budget.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. **SHORT TITLE.** This Act shall be known and may be cited as the General Appropriations Act of 1999.

SECTION 2. **DEFINITIONS.** Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.

(b) "Expending agency" means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, Office of Hawaiian Affairs and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act. Abbreviations where used to denote the expending agency shall mean the following:

AGR	Department of Agriculture
AGS	Department of Accounting and General Services
ATG	Department of the Attorney General
BED	Department of Business, Economic Development, and Tourism
BUF	Department of Budget and Finance
CCA	Department of Commerce and Consumer Affairs
DEF	Department of Defense
EDN	Department of Education

GOV	Office of the Governor
HHL	Department of Hawaiian Home Lands
HMS	Department of Human Services
HRD	Department of Human Resources Development
HTH	Department of Health
LBR	Department of Labor and Industrial Relations
LNR	Department of Land and Natural Resources
LTG	Office of the Lieutenant Governor
PSD	Department of Public Safety
SUB	Subsidies
TAX	Department of Taxation
TRN	Department of Transportation
UOH	University of Hawaii
CCH	City and County of Honolulu
COH	County of Hawaii
COK	County of Kauai
COM	County of Maui

(c) "Means of financing," or "MOF" means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meaning:

A	general funds
B	special funds
C	general obligation bond fund
D	general obligation bond fund with debt service cost to be paid from special funds
E	revenue bond funds
J	federal aid interstate funds
K	federal aid primary funds
L	federal aid secondary funds
M	federal aid urban funds
N	other federal funds
R	private contributions
S	county funds
T	trust funds
U	interdepartmental transfers
W	revolving funds
X	other funds

(d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.

(e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. **APPROPRIATIONS.** The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 1999, and ending June 30, 2001. The total expenditures and the

number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each year, except as provided elsewhere in this Act, or as provided by general law.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
A. ECONOMIC DEVELOPMENT							
1.	BED102	COMMERCE AND INDUSTRY		32.00*		32.00*	
		OPERATING	BED	4,636,265A		3,636,265A	
			BED	195,578B		195,578B	
				3.00*		3.00*	
			BED	6,621,666W		6,621,666W	
2.	BED113	TOURISM		7.00*		7.00*	
		OPERATING	BED	99,058,551B		108,686,420B	
		INVESTMENT CAPITAL	BED	1,865,000C		C	
3.	BED143	HIGH TECHNOLOGY DEVELOPMENT CORPORATION		1.50*		1.50*	
		OPERATING	BED	1,354,363A		1,354,363A	
				1.50*		1.50*	
			BED	1,750,501B		1,750,501B	
			BED	2,000,000N		2,000,000N	
		INVESTMENT CAPITAL	BED	2,000,000C		C	
4.	BED107	FOREIGN TRADE		22.00*		22.00*	
		OPERATING	BED	1,936,865B		1,936,865B	
5.	AGR101	FINANCIAL ASSISTANCE FOR AGRICULTURE		12.00*		12.00*	
		OPERATING	AGR	976,270B		976,270B	
			AGR	59,400T		59,400T	
			AGR	5,000,000W		5,000,000W	
6.	AGR122	PLANT PEST AND DISEASE CONTROL		94.00*		94.00*	
		OPERATING	AGR	3,641,805A		3,641,805A	
			AGR	279,964N		279,964N	
			AGR	348,600T		363,600T	
				1.00*		1.00*	
			AGR	116,276U		116,276U	
7.	AGR131	ANIMAL QUARANTINE		46.00*		46.00*	
		OPERATING	AGR	2,676,790B		2,705,242B	
8.	AGR132	ANIMAL DISEASE CONTROL		25.50*		25.50*	
		OPERATING	AGR	1,154,447A		1,154,447A	
			AGR	15,000T		15,000T	
			AGR	261,936U		261,936U	
9.	LNR172	FORESTRY - PRODUCTS DEVELOPMENT		20.00*		20.00*	
		OPERATING	LNR	654,711A		654,711A	
			LNR	400,000B		400,000B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	APPROPRIATIONS FISCAL YEAR 2000-01	M O F
				2.00*		2.00*	
			LNR	374,505N		374,505N	
10.	AGR151	QUALITY AND PRICE ASSURANCE					
				31.00*		31.00*	
		OPERATING	AGR	1,257,618A		1,257,618A	
				2.00*		2.00*	
			AGR	222,400B		222,400B	
			AGR	19,424N		19,424N	
			AGR	300,000T		300,000T	
			AGR	573,201W		573,201W	
11.	AGR171	AGRICULTURAL DEVELOPMENT & MARKETING					
				20.00*		20.00*	
		OPERATING	AGR	1,142,559A		1,142,559A	
			AGR	75,000N		75,000N	
12.	AGR141	AGRICULTURAL RESOURCE MANAGEMENT					
				7.00*		7.00*	
		OPERATING	AGR	253,428A		253,428A	
				2.50*		2.50*	
			AGR	283,907B		283,907B	
				13.50*		13.50*	
			AGR	1,189,598W		1,152,408W	
		INVESTMENT CAPITAL	AGR	1,877,000C		1,188,000C	
			AGR	1,725,000N		1,500,000N	
13.	AGR161	AGRIBUSINESS DEVELOPMENT & RESEARCH					
				1.00*		1.00*	
		OPERATING	AGR	1,538,447A		838,447A	
			AGR	963,766W		956,778W	
14.	AGR192	GENERAL ADMINISTRATION FOR AGRICULTURE					
				29.00*		29.00*	
		OPERATING	AGR	1,299,151A		1,299,151A	
		INVESTMENT CAPITAL	AGS	800,000C		C	
15.	AGR102	FINANCIAL ASSISTANCE FOR AQUACULTURE					
		OPERATING					
16.	LNR153	COMMERCIAL FISHERIES AND AQUACULTURE					
				9.00*		9.00*	
		OPERATING	LNR	730,029A		730,029A	
			LNR	100,000B		100,000B	
			LNR	268,210N		268,210N	
		INVESTMENT CAPITAL	LNR	804,000C		C	
17.	AGR153	AQUACULTURE DEVELOPMENT PROGRAM					
				7.00*		7.00*	
		OPERATING	AGR	427,088A		427,088A	
			AGR	74,962N		74,962N	
18.	BED120	ENERGY DEVELOPMENT AND MANAGEMENT					
				7.00*		7.00*	
		OPERATING	BED	1,699,664A		1,699,664A	
			BED	1,732,875B		1,782,875B	
			BED	9,088,389N		9,088,389N	
			BED	100,000W		100,000W	
		INVESTMENT CAPITAL	BED	6,671,000C		8,703,000C	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
19.	LNR141 - WATER AND LAND DEVELOPMENT			3.00*		3.00*	
	OPERATING		LNR	266,227A		266,227A	
			LNR	110,000W		110,000W	
	INVESTMENT CAPITAL		LNR	1,032,000C		4,000,000C	
20.	BED130 - ECON PLANNING & RESEARCH FOR ECON DEVELOPMENT			18.00*		18.00*	
	OPERATING		BED	925,491A		925,491A	
				3.00*		3.00*	
			BED	956,034B		956,034B	
21.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT			31.00*		31.00*	
	OPERATING		BED	1,539,357A		1,539,357A	
				1.00*		1.00*	
			BED	3,599,595B		3,599,595B	
B.	**EMPLOYMENT**						
1.	LBR111 - PLACEMENT SERVICES			4.30*		4.30*	
	OPERATING		LBR	627,356A		277,356A	
			LBR	9,698,814B		9,698,814B	
				119.20*		119.20*	
			LBR	36,448,210N		36,448,210N	
			LBR	1,228,307U		1,228,307U	
2.	LBR135 - WORKFORCE DEVELOPMENT COUNCIL			3.00*		3.00*	
	OPERATING		LBR	145,701A		145,701A	
			LBR	171,160N		172,450N	
3.	LBR143 - OCCUPATIONAL SAFETY & HEALTH			26.00*		26.00*	
	OPERATING		LBR	975,736A		975,736A	
			LBR	501,428B		501,428B	
				26.00*		26.00*	
			LBR	1,694,407N		1,639,407N	
				18.00*		18.00*	
			LBR	1,200,000W		1,200,000W	
4.	LBR152 - WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES			28.35*		28.35*	
	OPERATING		LBR	1,016,924A		1,016,924A	
			LBR	53,131U		53,131U	
5.	LBR153 - CIVIL RIGHTS COMMISSION			21.50*		21.50*	
	OPERATING		LBR	958,736A		958,736A	
				4.00*		4.00*	
			LBR	414,888N		414,888N	
6.	LBR161 - PUBLIC AND PRIVATE EMPLOYMENT			2.00*		2.00*	
	OPERATING		LBR	498,808A		498,808A	
7.	LBR171 - UNEMPLOYMENT COMPENSATION						
	OPERATING		LBR	166,520,147B		166,520,147B	
				231.90*		231.90*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
			LBR	12,818,961	N	12,818,961	N
8.	LBR183	DISABILITY COMPENSATION					
				116.00*		116.00*	
		OPERATING	LBR	4,091,734	A	4,091,734	A
				3.00*		3.00*	
			LBR	20,675,713	B	20,675,713	B
9.	HMS802	VOCATIONAL REHABILITATION					
				26.17*		26.17*	
		OPERATING	HMS	3,689,539	A	3,689,539	A
				90.33*		90.33*	
			HMS	8,843,430	N	8,843,430	N
			HMS	1,330,200	W	1,330,200	W
10.	LBR901	DLIR-DATA GATHERING, RESEARCH AND ANALYSIS					
				8.88*		8.88*	
		OPERATING	LBR	609,443	A	609,443	A
				29.12*		29.12*	
			LBR	2,278,136	N	2,245,236	N
11.	LBR902	GENERAL ADMINISTRATION					
				29.12*		29.12*	
		OPERATING	LBR	1,276,294	A	1,276,294	A
				35.06*		35.06*	
			LBR	2,537,314	N	2,533,505	N
12.	LBR903	OFFICE OF COMMUNITY SERVICES					
				5.00*		5.00*	
		OPERATING	LBR	5,021,429	A	5,021,429	A
				3.00*		3.00*	
			LBR	5,810,273	N	5,810,273	N
		INVESTMENT CAPITAL	LBR	2,200,000	C		C
			LBR	150,000	R		R
			LBR	625,000	S		S
13.	LBR812	LABOR & INDUSTRIAL RELATIONS APPEALS BOARD					
				12.00*		12.00*	
		OPERATING	LBR	618,828	A	618,828	A
C. TRANSPORTATION FACILITIES							
1.	TRN102	HONOLULU INTERNATIONAL AIRPORT					
				646.75*		646.75*	
		OPERATING	TRN	69,774,472	B	74,217,772	B
		INVESTMENT CAPITAL	TRN	2,160,000	B		B
			TRN		E	56,000,000	E
2.	TRN104	GENERAL AVIATION					
				30.00*		30.00*	
		OPERATING	TRN	4,469,393	B	4,835,539	B
3.	TRN111	HILO INTERNATIONAL AIRPORT					
				79.00*		79.00*	
		OPERATING	TRN	10,949,926	B	8,529,492	B
		INVESTMENT CAPITAL	TRN	350,000	B		B
4.	TRN114	KONA INTERNATIONAL AIRPORT AT KE'AHOLE					
				94.00*		94.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
		OPERATING	TRN	9,161,627	B	7,735,901	B
5.	TRN116	WAIMEA-KOHALA AIRPORT		2.00*		2.00*	
		OPERATING	TRN	182,844	B	251,149	B
6.	TRN118	UPOLU AIRPORT					
		OPERATING	TRN	223,562	B	275,437	B
7.	TRN131	KAHULUI AIRPORT		172.00*		172.00*	
		OPERATING	TRN	14,106,535	B	13,391,849	B
		INVESTMENT CAPITAL	TRN	13,800,000	B		B
8.	TRN133	HANA AIRPORT		2.00*		2.00*	
		OPERATING	TRN	130,454	B	140,308	B
9.	TRN135	KAPALUA AIRPORT		5.00*		5.00*	
		OPERATING	TRN	760,981	B	638,073	B
10.	TRN141	MOLOKAI AIRPORT		15.00*		15.00*	
		OPERATING	TRN	1,653,295	B	1,186,719	B
11.	TRN143	KALAUPAPA AIRPORT		1.00*		1.00*	
		OPERATING	TRN	75,715	B	43,365	B
12.	TRN151	LANAI AIRPORT		10.00*		10.00*	
		OPERATING	TRN	1,364,839	B	1,115,782	B
13.	TRN161	LIHUE AIRPORT		108.00*		108.00*	
		OPERATING	TRN	10,678,411	B	9,624,449	B
		INVESTMENT CAPITAL	TRN	200,000	B		B
14.	TRN163	PORT ALLEN AIRPORT					
		OPERATING	TRN	1,860	B	1,860	B
15.	TRN195	AIRPORTS ADMINISTRATION		114.00*		114.00*	
		OPERATING	TRN	142,005,276	B	146,100,154	B
		INVESTMENT CAPITAL	TRN	11,400,000	B	12,300,000	B
			TRN	4,800,000	N		N
16.	TRN301	HONOLULU HARBOR		125.00*		125.00*	
		OPERATING	TRN	11,596,895	B	11,690,916	B
		INVESTMENT CAPITAL	TRN	13,490,000	B	2,100,000	B
			TRN	20,500,000	E		E
			TRN	3,000,000	N		N
17.	TRN303	KALAELOA BARBERS POINT HARBOR		3.00*		3.00*	
		OPERATING	TRN	434,308	B	434,308	B
		INVESTMENT CAPITAL	TRN	500,000	B		B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
18.	TRN305	KEWALO BASIN		2.00*		2.00*	
		OPERATING	TRN	795,951	B	846,951	B
		INVESTMENT CAPITAL	TRN	1,700,000	B		B
19.	TRN311	HILO HARBOR		11.00*		11.00*	
		OPERATING	TRN	1,453,331	B	1,407,631	B
		INVESTMENT CAPITAL	TRN	600,000	B	3,500,000	B
20.	TRN313	KAWAIHAE HARBOR		5.00*		5.00*	
		OPERATING	TRN	498,961	B	548,961	B
21.	TRN331	KAHULUI HARBOR		15.00*		15.00*	
		OPERATING	TRN	1,754,537	B	1,765,437	B
		INVESTMENT CAPITAL	TRN		B	3,000,000	B
			TRN	5,000,000	E		E
22.	TRN341	KAUNAKAKAI HARBOR		1.00*		1.00*	
		OPERATING	TRN	249,549	B	219,249	B
23.	TRN361	NAWILIWILI HARBOR		14.00*		14.00*	
		OPERATING	TRN	1,271,537	B	1,303,037	B
24.	TRN363	PORT ALLEN HARBOR		1.00*		1.00*	
		OPERATING	TRN	417,199	B	298,199	B
		INVESTMENT CAPITAL	TRN	250,000	B	1,500,000	B
25.	TRN351	KAUMALAPAU HARBOR					
		OPERATING	TRN	~~5,654~~	~~B~~[1]	~~5,654~~	~~B~~[1]
		INVESTMENT CAPITAL	TRN	1,500,000	B		B
			TRN	1,500,000	R		R
26.	TRN395	HARBORS ADMINISTRATION		58.00*		58.00*	
		OPERATING	TRN	34,676,758	B	34,980,284	B
		INVESTMENT CAPITAL	TRN	3,375,000	B	1,975,000	B
			TRN	3,000,000	N		N
27.	TRN501	OAHU HIGHWAYS		275.00*		275.00*	
		OPERATING	TRN	38,534,043	B	38,294,440	B
		INVESTMENT CAPITAL	TRN	20,180,000	E	20,355,000	E
			TRN	31,950,000	N	40,360,000	N
28.	TRN511	HAWAII HIGHWAYS		128.00*		128.00*	
		OPERATING	TRN	15,921,190	B	16,907,302	B
		INVESTMENT CAPITAL	TRN	3,200,000	E	3,575,000	E
			TRN	5,315,000	N	4,705,000	N
29.	TRN531	MAUI HIGHWAYS		79.00*		79.00*	
		OPERATING	TRN	11,319,326	B	11,380,855	B
		INVESTMENT CAPITAL	TRN	4,730,000	E	3,190,000	E

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
			TRN	4,445,000	N	1,110,000	N
30.	TRN541	MOLOKAI HIGHWAYS		12.00*		12.00*	
		OPERATING	TRN	3,769,351	B	3,246,303	B
		INVESTMENT CAPITAL	TRN	75,000	E	145,000	E
			TRN		N	565,000	N
31.	TRN551	LANAI HIGHWAYS		5.00*		5.00*	
		OPERATING	TRN	875,139	B	773,775	B
32.	TRN561	KAUAI HIGHWAYS		51.00*		51.00*	
		OPERATING	TRN	8,361,647	B	8,290,369	B
		INVESTMENT CAPITAL	TRN	14,895,000	E	3,055,000	E
			TRN	5,125,000	N	2,340,000	N
33.	TRN595	HIGHWAYS ADMINISTRATION		70.00*		70.00*	
		OPERATING	TRN	57,788,561	B	64,196,144	B
			TRN	800,000	N	800,000	N
		INVESTMENT CAPITAL	TRN	20,110,000	E	17,110,000	E
			TRN	12,530,000	N	12,730,000	N
34.	TRN597	HIGHWAY SAFETY		36.00*		36.00*	
		OPERATING	TRN	5,061,332	B	5,067,300	B
				3.00*		3.00*	
			TRN	242,215	N	243,629	N
35.	TRN995	GENERAL ADMINISTRATION		90.00*		90.00*	
		OPERATING	TRN	11,313,020	B	11,317,289	B
D.		**ENVIRONMENTAL PROTECTION**					
1.	HTH840	ENVIRONMENTAL MANAGEMENT		56.00*		56.00*	
		OPERATING	HTH	2,627,781	A	2,627,781	A
				49.20*		49.20*	
			HTH	6,371,466	B	6,371,466	B
				34.40*		34.40*	
			HTH	5,115,839	N	5,115,839	N
				49.40*		49.40*	
			HTH	47,572,946	W	47,572,946	W
		INVESTMENT CAPITAL	HTH	3,846,000	C	3,846,000	C
			HTH	19,225,000	N	19,225,000	N
2.	AGR846	PESTICIDES		20.00*		20.00*	
		OPERATING	AGR	761,054	A	761,054	A
			AGR	350,000	N	350,000	N
			AGR	250,000	W	250,000	W
3.	LNR401	AQUATIC RESOURCES		27.00*		27.00*	
		OPERATING	LNR	2,070,437	A	2,070,437	A
				1.00*		1.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	APPROPRIATIONS FISCAL YEAR 2000-01	M O F
			LNR	1,081,717	N	1,081,717	N
4.	LNR402	- FOREST AND WILDLIFE RESOURCES					
				54.50	*	54.50	*
		OPERATING	LNR	2,784,513	A	2,409,513	A
				6.50	*	6.50	*
			LNR	1,360,977	N	1,360,977	N
		INVESTMENT CAPITAL	LNR	25,000	C		C
5.	LNR404	- WATER RESOURCES					
				19.00	*	19.00	*
		OPERATING	LNR	1,416,525	A	1,416,525	A
			LNR	110,704	B	110,704	B
		INVESTMENT CAPITAL	LNR	270,000	C		C
6.	LNR405	- CONSERVATION & RESOURCES ENFORCEMENT					
				97.50	*	97.50	*
		OPERATING	LNR	4,452,711	A	4,475,708	A
				18.00	*	18.00	*
			LNR	1,570,896	B	1,570,896	B
				2.50	*	2.50	*
			LNR	630,390	N	630,390	N
				1.00	*	1.00	*
			LNR	11,660	W	11,660	W
		INVESTMENT CAPITAL	LNR	35,000	C		C
7.	LNR407	- NATURAL AREA RESERVES & MANAGEMENT					
				27.00	*	27.00	*
		OPERATING	LNR	1,138,826	A	1,138,826	A
			LNR	1,500,000	B	1,500,000	B
8.	HTH850	- POLICY DVLPMENT,COORD & ANLYS FOR NAT P ENVR					
				5.00	*	5.00	*
		OPERATING	HTH	231,586	A	231,586	A
9.	LNR906	- LNR-NATURAL PHYSICAL ENVIRONMENT					
				34.00	*	34.00	*
		OPERATING	LNR	1,503,441	A	1,503,441	A
		INVESTMENT CAPITAL	LNR	1,560,000	C	1,560,000	C
10.	HTH849	- ENVIRONMENTAL HEALTH ADMINISTRATION					
				15.50	*	15.50	*
		OPERATING	HTH	660,336	A	660,336	A
				18.50	*	18.50	*
			HTH	1,598,532	N	1,598,532	N
				10.00	*	10.00	*
			HTH	2,857,945	W	2,857,945	W
E.	**HEALTH**						
1.	HTH101	- TUBERCULOSIS/HANSEN'S DISEASE CONTROL					
				36.00	*	36.00	*
		OPERATING	HTH	2,118,451	A	2,118,451	A
				3.00	*	3.00	*
			HTH	1,795,669	N	1,795,669	N
		INVESTMENT CAPITAL	AGS	255,000	C	2,554,000	C
2.	HTH111	- HANSEN'S DISEASE INSTITUTIONAL SERVICES					
				69.00	*	69.00	*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
		OPERATING	HTH	3,966,290A		3,966,290A	
3.	HTH121 - STD/AIDS PREVENTION SERVICES						
				15.00*		15.00*	
		OPERATING	HTH	5,431,608A		5,310,608A	
				4.50*		4.50*	
			HTH	3,382,140N		3,382,140N	
4.	HTH131 - EPIDEMIOLOGY SERVICES						
				19.00*		19.00*	
		OPERATING	HTH	1,204,975A		1,204,975A	
				21.00*		21.00*	
			HTH	4,200,000N		4,200,000N	
5.	HTH141 - DENTAL DISEASES						
				25.60*		25.60*	
		OPERATING	HTH	1,156,334A		1,156,334A	
6.	HTH180 - HEALTH PROMOTION & ED, INJURY PREV & CONTROL						
				22.80*		22.80*	
		OPERATING	HTH	1,089,103A		1,089,103A	
				5.00*		5.00*	
			HTH	3,704,524N		3,704,524N	
7.	HTH165 - WOMAN, INFANTS & CHILDREN'S BRANCH						
				116.50*		116.50*	
		OPERATING	HTH	33,677,385N		33,677,385N	
8.	HTH501 - DEVELOPMENTAL DISABILITIES						
				299.75*		299.75*	
		OPERATING	HTH	27,117,661A		27,117,661A	
9.	HTH530 - CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES						
				84.25*		84.25*	
		OPERATING	HTH	5,908,309A		5,887,309A	
				3.00*		3.00*	
			HTH	603,121B		603,121B	
				23.00*		23.00*	
			HTH	5,432,299N		5,280,299N	
10.	HTH540 - SCHOOL HEALTH SERVICES						
				61.00*		61.00*	
		OPERATING	HTH	2,051,346A		2,051,346A	
				2.00*		2.00*	
			HTH	100,024N		100,024N	
11.	HTH550 - MATERNAL & CHILD HEALTH SERVICES						
				21.00*		21.00*	
		OPERATING	HTH	12,152,316A		12,152,316A	
			HTH	300,000B		B	
				28.00*		28.00*	
			HTH	4,097,628N		4,097,628N	
			HTH	250,000U		250,000U	
		INVESTMENT CAPITAL	HTH	887,000C		C	
12.	HTH570 - COMMUNITY HEALTH NURSING						
				442.50*		444.50*	
		OPERATING	HTH	12,407,671A		12,438,661A	
				1.00*		1.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
			HTH	29,675	N	29,675	N
13.	HTH730	- EMERGENCY MEDICAL SERVICES		12.00	*	12.00	*
		OPERATING	HTH	35,521,864	A	35,226,037	A
			HTH	295,786	N	295,786	N
14.	HTH595	- HEALTH RESOURCES ADMINISTRATION		44.00	*	44.00	*
		OPERATING	HTH	8,243,419	A	3,108,419	A
				2.00	*	2.00	*
			HTH	4,678,499	B	4,678,499	B
				3.00	*	3.00	*
			HTH	591,804	N	591,804	N
			HTH	4,500,000	T	4,500,000	T
15.	HTH210	- HOSPITAL CARE - HAWAII HEALTH SYSTEMS CORP					
		OPERATING	HTH	7,750,000	A		A
				2,836.25	*	2,836.25	*
			HTH	235,409,387	B	239,123,387	B
		INVESTMENT CAPITAL	HTH	1,384,000	C		C
			HTH	15,000,000	E	15,000,000	E
16.	HTH420	- ADULT MENTAL HEALTH - OUTPATIENT		227.00	*	227.00	*
		OPERATING	HTH	17,016,359	A	17,016,359	A
			HTH	2,507,430	B	2,507,430	B
			HTH	1,026,514	N	1,026,514	N
17.	HTH430	- ADULT MENTAL HEALTH - INPATIENT		617.50	*	617.50	*
		OPERATING	HTH	30,533,376	A	30,533,376	A
		INVESTMENT CAPITAL	AGS	257,000	C		C
18.	HTH440	- ALCOHOL & DRUG ABUSE		7.00	*	7.00	*
		OPERATING	HTH	6,072,559	A	6,008,572	A
				2.00	*	2.00	*
			HTH	6,164,754	N	6,164,754	N
19.	HTH460	- CHILD & ADOLESCENT MENTAL HEALTH		156.00	*	156.00	*
		OPERATING	HTH	83,336,964	A	86,354,688	A
			HTH	3,852,095	B	6,538,189	B
			HTH	4,598,644	N	4,598,644	N
20.	HTH495	- BEHAVIORAL HEALTH SERVICES ADMINISTRATION		75.00	*	75.00	*
		OPERATING	HTH	6,707,363	A	6,564,211	A
			HTH	330,347	B	559,253	B
				4.00	*	4.00	*
			HTH	1,698,299	N	1,698,299	N
			HTH	1,771,150	U	1,771,150	U
21.	HTH610	- ENVIRONMENTAL HEALTH SERVICES		148.00	*	148.00	*
		OPERATING	HTH	5,234,494	A	5,234,494	A
				6.00	*	6.00	*
			HTH	544,975	B	518,475	B
				7.00	*	7.00	*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
			HTH	515,230	N	515,230	N
				2.00	*	2.00	*
			HTH	70,298	U	70,298	U
22.	HTH710 - STATE LABORATORY SERVICES						
				90.00	*	90.00	*
	OPERATING		HTH	4,413,433	A	4,413,433	A
23.	HTH720 - MED FACILITIES - STDS, INSPECTION, LICENSING						
				16.90	*	16.90	*
	OPERATING		HTH	898,688	A	898,688	A
				20.70	*	20.70	*
			HTH	1,559,994	N	1,559,994	N
24.	HTH906 - COMPREHENSIVE HEALTH PLANNING						
				8.00	*	8.00	*
	OPERATING		HTH	439,450	A	410,450	A
25.	HTH760 - HEALTH STATUS MONITORING						
				29.00	*	29.00	*
	OPERATING		HTH	1,339,753	A	1,339,753	A
			HTH	250,000	B		B
			HTH	397,214	N	397,214	N
	INVESTMENT CAPITAL		AGS	120,000	C		C
26.	HTH905 - POLICY DEV & ADVOCACY FOR DEV DISABILITIES						
				1.50	*	1.50	*
	OPERATING		HTH	80,151	A	80,151	A
				6.50	*	6.50	*
			HTH	433,728	N	433,728	N
27.	HTH907 - GENERAL ADMINISTRATION						
				114.00	*	114.00	*
	OPERATING		HTH	5,127,611	A	5,127,611	A
			HTH	441,401	N	441,401	N
	INVESTMENT CAPITAL		AGS	1,080,000	C		C
			HTH	150,000	C		C
F.	**SOCIAL SERVICES**						
1.	HMS301 - CHILD WELFARE SERVICES						
				199.44	*	199.44	*
	OPERATING		HMS	17,472,121	A	17,472,121	A
			HMS	300,000	B	300,000	B
				172.56	*	172.56	*
			HMS	21,242,841	N	21,242,841	N
			HMS	425,000	W	425,000	W
2.	HMS302 - CHILD CARE SERVICES						
				24.00	*	24.00	*
	OPERATING		HMS	2,332,535	A	2,332,535	A
				1.00	*	1.00	*
			HMS	3,723,252	N	3,723,252	N
3.	HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS						
	OPERATING		HMS	14,574,464	A	15,600,025	A
			HMS	9,132,148	N	9,684,374	N
4.	HMS305 - CHILD CARE PAYMENTS						
	OPERATING		HMS	11,579,970	A	16,824,607	A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
			HMS	16,809,954	N	22,409,954	N
5.	HMS501 - YOUTH SERVICES ADMINISTRATION			22.00*		22.00*	
		OPERATING	HMS	1,185,930	A	1,185,930	A
			HMS	2,336,746	N	1,852,146	N
6.	HMS502 - YOUTH SERVICES PROGRAM						
		OPERATING	HMS	3,522,574	A	3,522,574	A
			HMS	870,342	N	870,342	N
7.	HMS503 - YOUTH RESIDENTIAL PROGRAMS			75.50*		75.50*	
		OPERATING	HMS	4,655,939	A	4,651,379	A
			HMS	1,802,704	N	1,802,704	N
8.	DEF112 - SERVICES TO VETERANS			24.00*		24.00*	
		OPERATING	DEF	1,125,776	A	1,125,776	A
		INVESTMENT CAPITAL	AGS	200,000	C		C
			DEF	3,150,000	C		C
9.	HMS601 - ADULT COMMUNITY CARE SERVICES BRANCH			81.16*		81.16*	
		OPERATING	HMS	6,987,048	A	6,953,183	A
				.34*		.34*	
			HMS	5,008,264	N	5,004,647	N
			HMS	279,687	U	279,687	U
10.	HMS201 - TEMP ASSISTANCE TO NEEDY FAMILIES						
		OPERATING	HMS	13,291,181	A	12,069,081	A
			HMS	75,910,687	N	70,910,687	N
11.	HMS202 - PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED						
		OPERATING	HMS	24,160,871	A	24,540,752	A
12.	HMS204 - GENERAL ASSISTANCE PAYMENTS						
		OPERATING	HMS	24,761,632	A	24,761,632	A
13.	HMS206 - FEDERAL ASSISTANCE PAYMENTS						
		OPERATING	HMS	1,491,331	N	1,491,331	N
14.	HMS203 - TEMP ASSISTANCE TO OTHER NEEDY FAMILIES						
		OPERATING	HMS	44,381,664	A	39,805,440	A
15.	BED220 - RENTAL HOUSING SERVICES						
		OPERATING	BED	1,007,337	A	1,007,337	A
				201.00*		201.00*	
			BED	21,277,601	N	21,277,601	N
				23.00*		23.00*	
			BED	3,681,800	W	3,681,800	W
		INVESTMENT CAPITAL	BED	180,000	C	300,000	C
16.	BED807 - TEACHER HOUSING						
		OPERATING	BED	249,972	W	249,972	W
17.	BED229 - HCDCH ADMINISTRATION			26.00*		26.00*	
		OPERATING	BED	10,059,620	N	10,059,620	N
				20.00*		20.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	APPROPRIATIONS FISCAL YEAR 2000-01	M O F
			BED	2,701,326	W	2,701,326	W
		INVESTMENT CAPITAL	BED	27,847,000	N	14,902,000	N
18.	BED225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP			10.00*		10.00*	
		OPERATING	BED	1,172,693	N	1,172,693	N
				13.00*		13.00*	
			BED	2,253,311	W	2,253,311	W
19.	BED223 - BROADENED HOMESITE OWNERSHIP						
		OPERATING	BED	233,953	W	233,953	W
20.	BED227 - HOUSING FINANCE						
		OPERATING	BED	3,000,000	N	3,000,000	N
				11.00*		11.00*	
			BED	1,338,741	W	1,338,741	W
21.	BED222 - RENTAL ASSISTANCE SERVICES			5.25*		5.25*	
		OPERATING	BED	2,017,698	A	2,017,698	A
				10.75*		10.75*	
			BED	17,391,306	N	17,391,306	N
22.	BED224 - HOMELESS SERVICES			4.00*		4.00*	
		OPERATING	BED	4,019,475	A	4,019,475	A
			BED	1,025,000	N	1,025,000	N
23.	BED231 - RENTAL HOUSING TRUST FUND						
		OPERATING	BED	6,653,827	T	6,653,827	T
24.	HMS230 - HEALTH CARE PAYMENTS						
		OPERATING	HMS	149,923,074	A	138,362,295	A
			HMS	168,683,650	N	150,295,539	N
			HMS	7,411,460	U	7,641,215	U
25.	HMS603 - HOME AND COMMUNITY BASED CARE SERVICES						
		OPERATING	HMS	10,643,174	A	10,677,039	A
			HMS	21,479,723	N	21,513,588	N
			HMS	10,836,549	U	10,836,549	U
26.	HMS245 - QUEST HEALTH CARE PAYMENTS						
		OPERATING	HMS	142,642,982	A	148,893,561	A
			HMS	149,505,647	N	157,653,958	N
27.	HMS236 - ELIG DETER. & EMPLOYMT RELATED SVCS			334.74*		334.74*	
		OPERATING	HMS	11,155,293	A	11,155,293	A
				260.26*		260.26*	
			HMS	12,842,579	N	12,842,579	N
28.	HMS238 - DISABILITY DETERMINATION			45.00*		45.00*	
		OPERATING	HMS	4,538,187	N	4,538,187	N
29.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES			50.66*		50.66*	
		OPERATING	ATG	1,654,284	A	1,654,284	A
				125.40*		125.40*	
			ATG	13,197,573	N	13,141,473	N

PROGRAM APPROPRIATIONS

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				13.94*		13.94*	
			ATG	2,654,987T		2,626,087T	
30.	HMS237 - EMPLOYMENT & TRAINING						
				2.00*		2.00*	
	OPERATING		HMS	503,723A		503,723A	
			HMS	2,157,361N		2,157,361N	
31.	HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS						
				33.00*		33.00*	
	OPERATING		HHL	1,298,554A		1,298,554A	
				85.00*		85.00*	
			HHL	5,822,627B		5,822,627B	
	INVESTMENT CAPITAL		HHL	300,000C		C	
			HHL	E		25,000,000E	
32.	HTH904 - EXECUTIVE OFFICE ON AGING						
				3.55*		3.55*	
	OPERATING		HTH	4,981,871A		4,981,871A	
				7.45*		7.45*	
			HTH	5,875,828N		5,875,828N	
33.	HTH520 - PLAN, PROG DEV & COORD OF SVS FOR PERS W/DISABILITIES						
				5.00*		5.00*	
	OPERATING		HTH	614,238A		614,238A	
34.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS						
				59.00*		59.00*	
	OPERATING		HMS	7,161,780A		8,473,148A	
				63.00*		63.00*	
			HMS	11,222,854N		15,239,691N	
35.	HMS903 - GEN SPPT FOR BEN, EMPLOYMT & SPPT SVCS						
				55.80*		55.80*	
	OPERATING		HMS	8,074,132A		8,074,132A	
				47.20*		47.20*	
			HMS	12,333,711N		11,733,711N	
36.	HMS904 - GENERAL ADMINISTRATION (DHS)						
				170.50*		170.50*	
	OPERATING		HMS	6,634,720A		6,634,720A	
				15.50*		15.50*	
			HMS	993,015N		993,015N	
37.	HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES						
				14.97*		14.97*	
	OPERATING		HMS	1,231,546A		1,231,546A	
				10.03*		10.03*	
			HMS	1,307,736N		1,307,736N	
G.	**FORMAL EDUCATION**						
1.	EDN100 - SCHOOL-BASED BUDGETING						
				11,418.50*		11,247.00*	
	OPERATING		EDN	554,402,063A		541,698,761A	
			EDN	5,372,924B		5,372,924B	
			EDN	54,405,062N		53,946,763N	
			EDN	3,410,000T		3,410,000T	
			EDN	928,135U		928,135U	
			EDN	2,000,000W		2,000,000W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
		INVESTMENT CAPITAL	AGS	110,750,000	B	57,345,000	B
			AGS	13,997,000	C	2,045,000	C
			EDN	250,000	B	250,000	B
2.	EDN150 - COMPREHENSIVE SCHOOL SUPPORT SERVICES			3,603.50	*	3,942.50	*
		OPERATING	EDN	137,840,809	A	147,240,574	A
			EDN	21,347,768	N	25,151,685	N
			EDN	1,000,000	U	1,000,000	U
3.	EDN200 - INSTRUCTIONAL SUPPORT			208.00	*	208.00	*
		OPERATING	EDN	16,185,466	A	14,701,516	A
			EDN	2,032,124	N	2,340,205	N
			EDN	800,000	U	800,000	U
			EDN	750,000	W	750,000	W
4.	EDN300 - STATE AND DISTRICT ADMINISTRATION			416.50	*	416.50	*
		OPERATING	EDN	22,186,091	A	22,166,091	A
			EDN	418,621	N	418,621	N
5.	EDN400 - SCHOOL SUPPORT			1,541.10	*	1,564.10	*
		OPERATING	EDN	77,972,061	A	78,163,040	A
				720.50	*	720.50	*
			EDN	19,102,730	B	18,888,750	B
				3.00	*	3.00	*
			EDN	32,262,220	N	32,632,649	N
6.	EDN500 - SCHOOL COMMUNITY SERVICE			36.50	*	36.50	*
		OPERATING	EDN	16,305,996	A	16,305,996	A
			EDN	953,642	B	1,939,006	B
			EDN	1,789,147	N	1,889,147	N
			EDN	400,000	W	530,000	W
7.	AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS			239.00	*	239.00	*
		OPERATING	AGS	25,380,208	A	25,380,208	A
8.	AGS808 - STUDENT TRANSPORTATION			10.00	*	10.00	*
		OPERATING	AGS	20,263,549	A	20,263,549	A
9.	EDN407 - PUBLIC LIBRARIES			519.05	*	519.05	*
		OPERATING	EDN	19,617,274	A	19,617,274	A
			EDN	3,125,000	B	3,125,000	B
			EDN	662,764	N	662,764	N
		INVESTMENT CAPITAL	AGS	1,819,000	C		C
10.	UOH100 - UNIVERSITY OF HAWAII, MANOA			3,438.09	*	3,438.09	*
		OPERATING	UOH	168,887,909	A	168,137,909	A
				81.75	*	81.75	*
			UOH	60,358,059	B	60,086,024	B
				78.06	*	78.06	*
			UOH	5,411,667	N	5,411,667	N
				205.75	*	205.75	*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
			UOH	58,203,897	W	58,203,897	W
		INVESTMENT CAPITAL	AGS	1,808,000	C		C
			UOH	500,000	B		B
			UOH	7,853,000	C		C
			UOH	6,750,000	E		E
			UOH	730,000	R		R
			UOH	150,000	W		W
11.	UOH210 - UNIVERSITY OF HAWAII, HILO						
				327.00*		327.00*	
		OPERATING	UOH	16,656,670	A	16,156,670	A
				14.00*		14.00*	
			UOH	6,840,557	B	6,840,557	B
			UOH	394,543	N	394,543	N
				11.50*		11.50*	
			UOH	4,084,938	W	4,084,938	W
		INVESTMENT CAPITAL	AGS	5,376,000	C		C
			AGS	1,800,000	N		N
			AGS	400,000	S		S
			UOH	500,000	C		C
12.	UOH700 - UNIVERSITY OF HAWAII, WEST OAHU						
				47.50*		46.50*	
		OPERATING	UOH	2,242,522	A	2,202,571	A
			UOH	849,815	B	849,815	B
			UOH	7,000	N	7,000	N
			UOH	125,000	W	125,000	W
13.	UOH800 - UH - COMMUNITY COLLEGES						
				1,514.25*		1,514.25*	
		OPERATING	UOH	64,933,376	A	64,756,876	A
				50.50*		50.50*	
			UOH	32,283,340	B	32,283,340	B
				15.60*		15.60*	
			UOH	3,540,927	N	3,540,927	N
				29.00*		29.00*	
			UOH	10,773,091	W	10,773,091	W
		INVESTMENT CAPITAL	AGS	17,939,000	C	700,000	C
			UOH	1,050,000	C		C
14.	UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT						
				319.00*		319.00*	
		OPERATING	UOH	24,675,998	A	24,675,998	A
				4.00*		4.00*	
			UOH	1,266,333	B	1,266,333	B
				4.00*		4.00*	
			UOH	457,667	N	457,667	N
				100.00*		100.00*	
			UOH	44,852,645	W	44,852,645	W
		INVESTMENT CAPITAL	AGS	13,945,000	C	3,673,000	C
			UOH	13,893,000	C	5,351,000	C
			UOH	500,000	W		W
15.	UOH220 - SMALL BUSINESS DEVELOPMENT						
		OPERATING	UOH	390,000	A	390,000	A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
H. CULTURE AND RECREATION							
1.	UOH881	AQUARIA					
				13.00*		13.00*	
		OPERATING	UOH	494,504A		494,504A	
				7.00*		7.00*	
			UOH	1,718,689B		1,718,689B	
2.	CCA701	HAWAII PUBLIC BROADCASTING					
				16.00*		*	
		OPERATING	CCA	897,103A		A	
				17.00*		*	
			CCA	5,465,601W		W	
3.	AGS881	PERFORMING & VISUAL ARTS EVENTS					
				10.00*		10.00*	
		OPERATING	AGS	2,091,651A		1,841,651A	
				8.00*		8.00*	
			AGS	4,074,309B		4,074,309B	
			AGS	783,891N		783,891N	
		INVESTMENT CAPITAL	AGS	350,000B		1,700,000B	
			AGS	500,000C		C	
4.	LNR802	HISTORIC PRESERVATION					
				13.00*		13.00*	
		OPERATING	LNR	543,632A		543,632A	
			LNR	58,624B		58,624B	
			LNR	428,301N		428,301N	
5.	LNR804	FOREST RECREATION					
				38.00*		38.00*	
		OPERATING	LNR	1,237,162A		1,237,162A	
				2.00*		2.00*	
			LNR	217,057B		217,057B	
				3.00*		3.00*	
			LNR	495,506N		495,506N	
			LNR	500,000W		500,000W	
		INVESTMENT CAPITAL	LNR	150,000C		C	
6.	LNR805	RECREATIONAL FISHERIES					
				7.00*		7.00*	
		OPERATING	LNR	171,327A		171,327A	
			LNR	37,000B		37,000B	
			LNR	412,878N		412,878N	
7.	LNR806	PARK DEVELOPMENT AND OPERATION					
				113.00*		113.00*	
		OPERATING	LNR	5,131,476A		5,031,476A	
			LNR	181,164B		181,164B	
		INVESTMENT CAPITAL	LNR	1,000,000B		B	
			LNR	2,775,000C		1,250,000C	
8.	LNR801	OCEAN-BASED RECREATION					
				90.00*		90.00*	
		OPERATING	LNR	11,608,933B		12,386,671B	
			LNR	700,000N		700,000N	
		INVESTMENT CAPITAL	LNR	2,500,000C		2,700,000C	
			LNR	445,000D		525,000D	
			LNR	4,600,000N		N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
9.	AGS889	SPECTATOR EVENTS & SHOWS - ALOHA STADIUM		39.50*		39.50*	
		OPERATING	AGS	5,242,124	B	4,998,124	B
		INVESTMENT CAPITAL	AGS	85,000	B	815,000	B
10.	LNR807	PARK INTERPRETATION		12.00*		12.00*	
		OPERATING	LNR	1,201,270	B	1,116,570	B
		INVESTMENT CAPITAL	LNR	600,000	B	760,000	B
			LNR	310,000	C		C
11.	LNR809	PARKS ADMINISTRATION		10.00*		10.00*	
		OPERATING	LNR	453,932	A	453,932	A
			LNR	285,201	N	285,201	N
I.	**PUBLIC SAFETY**						
1.	PSD402	HALAWA CORRECTIONAL FACILITY		404.00*		404.00*	
		OPERATING	PSD	15,582,256	A	15,481,113	A
			PSD	814,242	W	814,242	W
		INVESTMENT CAPITAL	AGS	727,000	C		C
2.	PSD403	KULANI CORRECTIONAL FACILITY		79.00*		79.00*	
		OPERATING	PSD	3,236,142	A	3,211,376	A
		INVESTMENT CAPITAL	AGS	512,000	C		C
3.	PSD404	WAIAWA CORRECTIONAL FACILITY		108.00*		108.00*	
		OPERATING	PSD	3,945,418	A	3,879,184	A
			PSD	179,392	W	179,392	W
4.	PSD405	HAWAII COMMUNITY CORRECTIONAL CENTER		166.00*		166.00*	
		OPERATING	PSD	5,808,120	A	5,713,249	A
5.	PSD406	MAUI COMMUNITY CORRECTIONAL CENTER		187.00*		187.00*	
		OPERATING	PSD	5,754,763	A	5,653,187	A
			PSD	92,000	S	92,000	S
6.	PSD407	OAHU COMMUNITY CORRECTIONAL CENTER		497.00*		497.00*	
		OPERATING	PSD	19,504,935	A	20,522,691	A
			PSD	615,069	W	615,069	W
		INVESTMENT CAPITAL	AGS	311,000	C		C
7.	PSD408	KAUAI COMMUNITY CORRECTIONAL CENTER		68.00*		68.00*	
		OPERATING	PSD	2,363,221	A	2,330,780	A
8.	PSD409	WOMEN'S COMMUNITY CORRECTIONAL CENTER		132.00*		132.00*	
		OPERATING	PSD	5,353,452	A	5,268,131	A
9.	PSD410	INTAKE SERVICE CENTERS		42.00*		42.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
		OPERATING	PSD	1,892,885	A	1,881,315	A
10.	PSD420 - CORRECTION PROGRAM SERVICES			205.50	*	205.50	*
		OPERATING	PSD	15,891,605	A	15,795,011	A
11.	PSD421 - HEALTH CARE			158.18	*	158.18	*
		OPERATING	PSD	9,222,772	A	9,108,823	A
12.	PSD501 - PROTECTIVE SERVICES			95.50	*	95.50	*
		OPERATING	PSD	3,857,470	A	3,793,010	A
			PSD	29,890	N	29,890	N
				13.00	*	13.00	*
			PSD	1,334,482	U	1,334,482	U
13.	PSD502 - NARCOTICS ENFORCEMENT			12.00	*	12.00	*
		OPERATING	PSD	513,452	A	510,124	A
				3.00	*	3.00	*
			PSD	236,680	W	236,680	W
14.	PSD503 - SHERIFF			149.00	*	146.00	*
		OPERATING	PSD	4,551,280	A	4,423,227	A
15.	PSD611 - ADULT PAROLE DETERMINATIONS			2.00	*	2.00	*
		OPERATING	PSD	198,223	A	198,223	A
16.	PSD612 - ADULT PAROLE SUPERVISION & COUNSELING			44.00	*	44.00	*
		OPERATING	PSD	1,621,668	A	1,615,028	A
17.	PSD613 - CRIME VICTIM COMPENSATION COMMISSION						
		OPERATING	PSD	1,000	A		A
				6.00	*	6.00	*
			PSD	337,042	B	350,937	B
18.	PSD900 - GENERAL ADMINISTRATION			142.10	*	141.10	*
		OPERATING	PSD	28,781,618	A	28,639,674	A
				3.00	*	3.00	*
			PSD	126,401	N	126,401	N
			PSD	25,065	T	25,065	T
				9.00	*	9.00	*
			PSD	9,560,204	W	9,560,204	W
			PSD	742,980	X	742,980	X
		INVESTMENT CAPITAL	PSD	300,000	C	300,000	C
19.	ATG231 - STATE CRIMINAL JUSTICE INFO & IDENTIFICATION			29.00	*	29.00	*
		OPERATING	ATG	1,463,192	A	1,463,192	A
			ATG	2,000,000	N	2,000,000	N
				8.00	*	8.00	*
			ATG	1,452,522	W	1,452,522	W
20.	LNR810 - PREVENTION OF NATURAL DISASTERS			3.25	*	3.25	*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
	OPERATING		LNR	177,575	A	177,575	A
				.75*		.75*	
			LNR	75,000	N	75,000	N
21.	DEF110 - AMELIORATION OF PHYSICAL DISASTERS						
				118.55*		118.55*	
	OPERATING		DEF	6,341,578	A	6,341,578	A
				32.45*		32.45*	
			DEF	6,249,015	N	6,249,015	N
	INVESTMENT CAPITAL		AGS	704,000	C	822,000	C
			AGS	75,000	N	510,000	N
			DEF	4,000,000	C	1,800,000	C
			DEF	41,000,000	N		N
J.	**INDIVIDUAL RIGHTS**						
1.	CCA102 - CABLE TELEVISION						
				4.00*		4.00*	
	OPERATING		CCA	734,312	B	734,312	B
2.	CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC						
				20.00*		20.00*	
	OPERATING		CCA	2,266,749	B	2,266,749	B
3.	CCA104 - FINANCIAL INSTITUTION SERVICES						
				19.00*		*	
	OPERATING		CCA	917,594	A		A
				8.00*		27.00*	
			CCA	605,047	B	1,760,203	B
4.	CCA105 - PROFESSIONAL, VOCATIONAL & PERSONAL SVCS						
				58.00*		58.00*	
	OPERATING		CCA	4,229,216	B	4,229,216	B
				2.00*		2.00*	
			CCA	1,306,404	T	1,288,904	T
5.	BUF901 - TRANSPORTATION, COMMUNICATIONS, & UTILITIES						
				44.00*		44.00*	
	OPERATING		BUF	5,735,548	B	5,651,898	B
6.	CCA106 - INSURANCE REGULATORY SERVICES						
				15.00*		15.00*	
	OPERATING		CCA	3,171,796	B	3,171,796	B
			CCA	135,518	T	135,518	T
				35.00*		35.00*	
			CCA	5,956,511	W	5,794,176	W
7.	CCA110 - OFFC OF CONSUMER PROT - UNFAIR/DECEP PRAC						
				15.00*		15.00*	
	OPERATING		CCA	1,354,862	B	1,354,862	B
			CCA	50,681	T	50,681	T
8.	AGR812 - MEASUREMENT STANDARDS						
				18.00*		18.00*	
	OPERATING		AGR	661,233	A	661,233	A
9.	CCA111 - BUSINESS REGISTRATION						
				76.00*		76.00*	
	OPERATING		CCA	5,794,925	B	5,794,925	B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	APPROPRIATIONS FISCAL YEAR 2000-01	M O F
10.	CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE			14.00*		14.00*	
	OPERATING		CCA	5,119,147	B	5,119,147	B
11.	CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUMER						
	OPERATING		CCA	386,884	A	386,884	A
				30.00*		30.00*	
			CCA	2,734,565	B	2,734,565	B
				1.00*		1.00*	
			CCA	73,471	X	73,471	X
12.	LTG105 - ENFORCEMENT OF INFORMATION PRACTICES			5.00*		5.00*	
	OPERATING		LTG	346,727	A	346,727	A
13.	BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS			82.00*		82.00*	
	OPERATING		BUF	7,181,965	A	7,181,965	A
14.	LNR111 - CONVEYANCES AND RECORDINGS			48.00*		48.00*	
	OPERATING		LNR	1,594,488	A	1,594,488	A
				3.00*		3.00*	
			LNR	1,818,390	B	399,423	B
				4.00*		4.00*	
			LNR	149,328	U	149,328	U
15.	LTG888 - COMMISSION ON THE STATUS OF WOMEN			1.00*		1.00*	
	OPERATING		LTG	99,949	A	99,949	A
K.	**GOVERNMENT-WIDE SUPPORT**						
1.	GOV100 - OFFICE OF THE GOVERNOR			35.00*		35.00*	
	OPERATING		GOV	3,063,742	A	3,063,742	A
	INVESTMENT CAPITAL		GOV	1,000	C	1,000	C
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR			5.00*		5.00*	
	OPERATING		LTG	599,904	A	599,904	A
3.	GOV102 - GOV - OTH POLICY DEVELOPMENT & COORDINATION			4.00*		4.00*	
	OPERATING		GOV	279,198	A	279,198	A
4.	BED144 - STATEWIDE PLANNING AND COORDINATION			20.00*		20.00*	
	OPERATING		BED	1,965,313	A	1,740,313	A
				4.00*		4.00*	
			BED	972,000	N	972,000	N
	INVESTMENT CAPITAL		BED	375,000	C		C
5.	BED103 - STATEWIDE LAND USE MANAGEMENT			7.00*		7.00*	
	OPERATING		BED	408,042	A	408,042	A
6.	BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY			2.00*		2.00*	
	OPERATING		BED	211,774	A	211,774	A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
			BED	3,300,000	B	3,300,000	B
			BED	400,000	N	400,000	N
			BED	100,000	U		U
			BED	1,500,000	W	1,750,000	W
		INVESTMENT CAPITAL	BED	11,006,000	C	1,421,000	C
			BED	14,400,000	N		N
			BED	2,000,000	W		W
7.	BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING			53.00*		53.00*	
		OPERATING	BUF	223,195,842	A	243,431,515	A
		INVESTMENT CAPITAL	BUF	105,456,000	C	86,216,000	C
8.	LTG101 - CAMPAIGN SPENDING COMMISSION			4.00*		4.00*	
		OPERATING	LTG	399,810	T	4,399,810	T
9.	LTG102 - OFFICE OF ELECTIONS			4.00*		4.00*	
		OPERATING	LTG	2,374,772	A	2,075,331	A
10.	TAX102 - INCOME ASSESSMENT AND AUDIT			111.00*		111.00*	
		OPERATING	TAX	4,065,425	A	4,065,425	A
11.	TAX103 - TAX COLLECTIONS ENFORCEMENT			93.00*		93.00*	
		OPERATING	TAX	2,686,070	A	2,686,070	A
12.	TAX105 - TAX SERVICES & PROCESSING			99.00*		99.00*	
		OPERATING	TAX	4,845,610	A	4,845,610	A
13.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION			40.00*		40.00*	
		OPERATING	TAX	4,713,810	A	5,002,128	A
14.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE			7.00*		7.00*	
		OPERATING	AGS	945,226	A	945,226	A
15.	AGS102 - EXPENDITURE EXAMINATION			19.00*		19.00*	
		OPERATING	AGS	963,091	A	960,793	A
16.	AGS103 - RECORDING AND REPORTING			12.00*		12.00*	
		OPERATING	AGS	500,697	A	500,697	A
17.	AGS104 - INTERNAL POST AUDIT			13.00*		13.00*	
		OPERATING	AGS	1,059,583	A	1,059,583	A
18.	BUF115 - FINANCIAL ADMINISTRATION			20.00*		20.00*	
		OPERATING	BUF	383,675,656	A	403,725,391	A
			BUF	8,680,000	T		T
			BUF	5,525	U	5,525	U
19.	ATG100 - LEGAL SERVICES						

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	APPROPRIATIONS FISCAL YEAR 2000-01	M O F
				195.84*		195.84*	
	OPERATING		ATG	17,264,461	A	16,981,624	A
				4.00*		4.00*	
			ATG	314,091	B	314,091	B
				12.00*		12.00*	
			ATG	7,592,065	N	7,705,997	N
			ATG	3,318,000	T	3,318,000	T
				32.16*		32.16*	
			ATG	5,383,192	U	5,372,567	U
				4.00*		4.00*	
			ATG	3,140,260	W	3,174,492	W
20.	AGS131 - INFORMATION PROCESSING SERVICES						
				165.00*		165.00*	
	OPERATING		AGS	11,604,972	A	10,804,972	A
				33.00*		33.00*	
			AGS	2,035,654	U	2,035,654	U
21.	AGS161 - COMMUNICATION						
				10.00*		10.00*	
	OPERATING		AGS	2,763,151	A	2,763,151	A
			AGS	1,250,000	U	1,250,000	U
22.	HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION AND EFF.						
				121.00*		121.00*	
	OPERATING		HRD	12,459,269	A	12,448,269	A
			HRD	4,858,381	U	4,886,281	U
			HRD	100,000	W	100,000	W
23.	HRD191 - SUPPORTING SERVICES-HUMAN RESOURCES DEVELOPMENT						
				11.00*		11.00*	
	OPERATING		HRD	1,139,794	A	1,150,794	A
24.	BUF141 - RETIREMENT						
				106,425,888		162,111,766	
	OPERATING		BUF	~~189,228,048~~	A[2]	~~192,131,046~~	A[2]
				53.00*		53.00*	
			BUF	11,490,868	X	6,763,002	X
25.	BUF142 - HEALTH & LIFE INSURANCE BENEFITS						
				15.00*		15.00*	
	OPERATING		BUF	625,224	A	615,224	A
			BUF	353,280,300	T	386,509,800	T
26.	LNR101 - PUBLIC LANDS MANAGEMENT						
				36.00*		36.00*	
	OPERATING		LNR	1,317,631	A	1,317,631	A
				16.00*		16.00*	
			LNR	5,115,332	B	3,379,382	B
			LNR	72,634	N	72,634	N
	INVESTMENT CAPITAL		LNR	1,350,000	B	900,000	B
			LNR	3,000,000	C		C
27.	AGS203 - RISK MANAGEMENT						
				4.00*		4.00*	
	OPERATING		AGS	5,395,618	A	5,395,618	A
			AGS	7,825,000	W	7,825,000	W
28.	AGS211 - LAND SURVEY						
				18.00*		18.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
		OPERATING	AGS	733,975	A	733,975	A
29.	AGS223	- OFFICE LEASING					
				4.00*		4.00*	
		OPERATING	AGS	13,315,521	A	13,315,521	A
			AGS	5,500,000	U	5,500,000	U
30.	AGS221	- CONSTRUCTION					
				19.00*		19.00*	
		OPERATING	AGS	1,071,713	A	1,071,713	A
			AGS	4,000,000	W	4,000,000	W
		INVESTMENT CAPITAL	AGS	15,457,000	C	6,997,000	C
			LBR	75,000	C		C
31.	AGS231	- CUSTODIAL SERVICES					
				155.50*		155.50*	
		OPERATING	AGS	10,820,024	A	10,820,024	A
			AGS	430,501	U	430,501	U
32.	AGS232	- GROUNDS MAINTENANCE					
				28.50*		28.50*	
		OPERATING	AGS	840,122	A	840,122	A
33.	AGS233	- BUILDING REPAIRS AND ALTERATIONS					
				27.00*		27.00*	
		OPERATING	AGS	2,438,119	A	2,438,119	A
34.	AGS240	- STATE PROCUREMENT					
				21.00*		21.00*	
		OPERATING	AGS	956,890	A	956,890	A
35.	AGS244	- SURPLUS PROPERTY MANAGEMENT					
				5.00*		5.00*	
		OPERATING	AGS	273,692	W	273,692	W
36.	AGS251	- MOTOR POOL					
				13.50*		13.50*	
		OPERATING	AGS	1,306,090	W	1,316,694	W
37.	AGS252	- PARKING CONTROL					
				22.50*		22.50*	
		OPERATING	AGS	2,754,556	W	2,730,507	W
38.	AGS111	- RECORDS MANAGEMENT					
				20.00*		20.00*	
		OPERATING	AGS	674,958	A	675,082	A
39.	AGS901	- GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS					
				45.00*		45.00*	
		OPERATING	AGS	2,047,652	A	2,047,652	A
				1.00*		1.00*	
			AGS	46,615	U	46,615	U
			AGS	11,257,500	W	11,257,500	W
40.	SUB201	- CITY AND COUNTY OF HONOLULU					
		OPERATING					
		INVESTMENT CAPITAL	CCH	900,000	C	3,300,000	C
41.	SUB301	- COUNTY OF HAWAII					
		OPERATING					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		INVESTMENT CAPITAL	COH	950,000C			C
42.		SUB401 - COUNTY OF MAUI OPERATING					
		INVESTMENT CAPITAL	COM	2,000,000C			C
43.		SUB501 - COUNTY OF KAUAI OPERATING					
		INVESTMENT CAPITAL	COK	610,000C			C

PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that for tourism (BED 113), the convention center authority shall submit a detailed action plan to minimize the operational shortfalls of the Hawaii convention center and the resulting deficits in the convention center operations special fund; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 5. Provided that the high technology development corporation (BED 143) shall submit a detailed action plan on its role in the consolidation of state entities involved in the development of high technology in Hawaii, including those divisions and offices within the department of business, economic development, and tourism related to high technology, the research corporation of the University of Hawaii, the pacific international center for high technology research, the Hawaii information network corporation, the Hawaii strategic development corporation, the office of technology transfer and economic development at the University of Hawaii, and the four county economic development boards; provided further that language for appropriate legislation shall be developed to effectuate the consolidation; and provided further that the report and appropriate legislation shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 6. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of $700,000 for fiscal year 1999-2000 and the sum of $547,413 for fiscal year 2000-2001 shall be expended as follows:

	FY 1999-2000	FY 2000-2001
Ornamental nursery research	$ 25,000	$ 25,000
Taro research	$ 20,000	$ 20,000
Coffee research	$ 25,000	$ 25,000
Macadamia research	$ 30,000	$ 30,000
State farm fair	$ 50,000	$ 50,000

	FY 1999-2000	FY 2000-2001
Plant alien pest program	$ 50,000	$ 50,000
Vegetable crop research	$ 35,000	$ 35,000
Pineapple research	$ 182,413	$ 182,413
Cut flower research	$ 75,000	$ 75,000
Tropical fruit research	$ 30,000	$ 30,000
Tropical flower research including dendrobiums	$ 112,587	$ -0-
Contingency emergency research for diversified agriculture	$ 25,000	$ 25,000;

provided further that:

(1) The department of agriculture shall submit an itemized report which shall include, but not be limited to, the progress being made with each specific commodity that is funded for research, and projected funding, if necessary, for the continuation of each of the research projects with justification for recommended funding in future years; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions;

(2) The department of agriculture shall support efforts to seek and obtain grants and other funds for agricultural research and development;

(3) The chairperson of the board of agriculture shall expedite all projects under this section, especially emergency actions; and

(4) The sums appropriated shall be expended by the department of agriculture for the purposes of this Act; provided that:

(a) The department of agriculture may require that any funds made available under this Act be matched by private funds; and

(b) The department of agriculture is authorized to transfer funds between projects under this section or to other projects or commodities as deemed necessary by the department of agriculture.

SECTION 7. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of $190,558 for fiscal year 1999-2000 and the sum of $190,558 for fiscal year 2000-2001 shall be deposited into the Hawaii agricultural development revolving fund to be expended for purposes of the fund.

TRANSPORTATION

SECTION 8. Provided that of the special fund appropriations for the airports division (TRN 102 - TRN 195), the following sums specified for special repair and maintenance projects for fiscal biennium 1999-2001 shall be expended for special repair and maintenance purposes only as follows:

Program I.D.	FY 1999-2000	FY 2000-2001
TRN 102	$ 4,525,000	$ 8,665,000
TRN 104	$ 435,000	$ 820,000
TRN 111	$ 3,822,500	$ 1,443,000
TRN 114	$ 1,487,000	$ 65,000
TRN 116	$ 40,000	$ 100,000
TRN 118	$ 190,000	$ 250,000

Program I.D.	FY 1999-2000	FY 2000-2001
TRN 131	$ 855,000	$ 290,000
TRN 133	$ 20,000	$ 45,000
TRN 135	$ 100,000	$ -0-
TRN 141	$ 555,000	$ 155,000
TRN 143	$ 30,000	$ -0-
TRN 151	$ 330,000	$ 35,000
TRN 161	$ 2,020,000	$ 820,000
TRN 195	$ 250,000	$ 260,000;

provided further that any unexpended funds shall be lapsed to the airport revenue fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 9. Provided that of the special fund appropriations for the airports division (TRN 102-TRN 195), that the department of transportation shall provide continued support for the hookipa aloha council program, and implement the made in Hawaii products program in the Hawaii state airports cultural master plan.

SECTION 10. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of $118,543,946 for fiscal year 1999-2000 and the sum of $122,619,105 for fiscal year 2000-2001 shall be expended for the following purposes:

Purpose	FY 1999-2000	FY 2000-2001
Interest and principal on general obligation bonds	$ 441,923	$ 424,155
Interest and principal on revenue bonds	$ 118,102,023	$ 122,194,950;

and provided further that any funds not expended for these purposes shall be lapsed to the airport revenue fund.

SECTION 11. Provided that of the special fund appropriations for the harbors division (TRN 301 - TRN 363), the following sums specified for special repair and maintenance projects for fiscal biennium 1999-2001 shall be expended for special repair and maintenance purposes only as follows:

Program I.D.	FY 1999-2000	FY 2000-2001
TRN 301	$ 3,545,000	$ 3,697,000
TRN 303	$ 160,000	$ 160,000
TRN 305	$ 251,000	$ 282,000
TRN 311	$ 735,000	$ 762,000
TRN 313	$ 222,000	$ 272,000
TRN 331	$ 852,000	$ 864,000
TRN 341	$ 163,000	$ 133,000
TRN 361	$ 452,000	$ 503,000
TRN 363	$ 329,000	$ 240,000;

provided further that any unexpended funds shall be lapsed to the harbor special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 12. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of $19,322,106 for fiscal year 1999-2000 and the sum of $21,902,532 for fiscal year 2000-2001 shall be expended for the following purposes:

Purpose	FY 1999-2000	FY 2000-2001
Interest and principal on general obligation bonds	$ 540,597	$ 525,249
Interest and principal on revenue bonds	$ 18,781,509	$ 21,377,283;

and provided further that any funds not expended for these purposes shall be lapsed to the harbor special fund.

SECTION 13. Provided that of the special fund appropriations for the highways division (TRN 501 - TRN 595), the following sums specified for special repair and maintenance projects for fiscal biennium 1999-2001, shall be expended for special repair and maintenance purposes only as follows:

Program I.D.	FY 1999-2000	FY 2000-2001
TRN 501	$ 16,073,100	$ 15,917,543
TRN 511	$ 8,509,423	$ 9,219,587
TRN 531	$ 6,713,144	$ 6,905,669
TRN 541	$ 3,171,518	$ 2,585,501
TRN 551	$ 505,900	$ 479,596
TRN 561	$ 5,126,955	$ 4,869,104
TRN 595	$ 149,960	$ 23,000;

provided further that any unexpended funds shall be lapsed to the state highway fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 14. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of $41,755,999 for fiscal year 1999-2000 and the sum of $48,525,776 for fiscal year 2000-2001 shall be expended for the following purposes:

Purpose	FY 1999-2000	FY 2000-2001
Interest and principal on general obligation bonds	$ 23,090,755	$ 26,162,506
Interest and principal on revenue bonds	$ 18,665,244	$ 22,363,270;

and provided further that any funds not expended for this purpose shall be lapsed to the state highway fund.

SECTION 15. Provided that of the special fund appropriation for general administration (TRN 995), the sum of $1,500,000 for fiscal year 1999-2000 and the sum of $1,000,000 for fiscal year 2000-2001 shall be expended for the purpose of resolving all computer and information systems problems that occur as a result of the year 2000 four-digit programming code; and provided further that any funds not expended for this purpose shall be lapsed to the general administration special fund.

ENVIRONMENTAL PROTECTION

SECTION 16. There is appropriated out of the natural area reserve fund the sum of $375,000 for fiscal year 1999-2000 to be placed in the general fund for forests and wildlife resources (LNR 402); provided that of the general fund appropriation for forests and wildlife resources (LNR 402), the sum of $150,000 for fiscal year 1999-2000 shall be expended for miconia eradication on the island of Hawaii; provided further that the sum of $50,000 for fiscal year 1999-2000 shall be expended for miconia eradication on Maui; provided further that the sum of $175,000 shall be expended for west Maui watershed management or the Maui invasive species committee, or both; and provided further that funds expended for the Maui invasive species committee shall be used to match nonstate funds.

HEALTH

SECTION 17. Provided that the department of health shall not reduce the allocation of funding for STD/AIDS prevention services (HTH 121) in a manner that may jeopardize the Ryan White federal funds; provided further that the department of health shall submit a report to the legislature itemizing the levels of funding provided to all STD/AIDS prevention providers; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 18. Provided that of the general fund appropriation for developmental disabilities (HTH 501), any funds unexpended and not required for the intermediate care facility mental retardation residential homes at Waimano training school and hospital shall be transferred to the Title XIX medicaid community-based intermediate care facility mental retardation program and the home and community-based services program.

SECTION 19. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of $900,000 for fiscal year 1999-2000 and the sum of $900,000 for fiscal year 2000-2001 may be expended for early intervention screening services to identify infants and children with special health needs; and provided further that these infants and children with special health needs shall be defined according to Public Law 105-17 (Individuals with Disabilities Education Act Amendments of 1997) or the Felix vs. Cayetano consent decree.

SECTION 20. Provided that of the general fund appropriation for health resources administration (HTH 595), not less than the sum of $500,000 for fiscal year 1999-2000 and not less than the sum of $500,000 for fiscal year 2000-2001 shall be expended for primary health care services for the medically uninsured.

SECTION 21. Provided that of the special fund appropriation for Hawaii health systems corporation (HTH 210), not less than the sum of $500,000 for fiscal year 1999-2000 and not less than the sum of $500,000 for fiscal year 2000-2001 shall be expended for worker's compensation liabilities.

SECTION 22. Provided that the department of education and the department of health shall develop and implement procedures regarding mental health services provided to children and adolescents; provided further that these procedures shall include the transition of the delivery of mental health services for this population from the child and adolescent mental health division (HTH 460), to the department of education; provided further that these procedures, where allowable, shall include the provision of mental health services for children and adolescents at the school-level; provided further that these procedures shall be implemented no later than August 30, 1999; provided further that the department of education and department of health shall collectively submit a report to the legislature on the status of the development of these procedures no later than July 20, 1999; and provided further that the department of education shall submit a report to the legislature on the status of implementing these procedures no later than October 31, 1999.

SECTION 23. Provided that the child and adolescent mental health division (HTH 460), shall implement policies and procedures that will allow for the transition of children and adolescents with mental health needs who are placed in out-of-state residential facilities to in-state residential facilities; provided further that the department of health shall make every effort to provide in-state services and placements for this population; and provided further that sufficient resources are allocated to effect this transfer.

SECTION 24. Provided that of the general fund appropriation for child and adolescent mental health (HTH 460), the sum of $1,120,760 for fiscal year 1999-2000, and the sum of $1,503,075 for fiscal year 2000-2001, shall be expended for the purpose of establishing and implementing an integrated Felix management information system, which will provide effective data reporting and case management.

SECTION 25. Provided that the department of health and education shall continue to fund the family court coordinator position until the Felix consent decree is no longer in effect or the position is funded for the judiciary by the legislature, whichever comes first.

SOCIAL SERVICES

SECTION 26. Provided that of the general fund appropriation for payments to assist the aged, blind, and disabled (HMS 202), not more than the sum of $24,160,871 for fiscal year 1999-2000 and not more than the sum of $24,540,752 for fiscal year 2000-2001 shall be expended for payments to qualified recipients of this program; and provided further that any unexpended funds shall be lapsed to the general fund.

SECTION 27. Provided that of the general fund appropriation for general assistance payments (HMS 204), not more than the sum of $24,761,632 for fiscal year 1999-2000 and not more than the sum of $24,761,632 for fiscal year 2000-2001 shall be expended for payments to qualified recipients of this program; and provided further that any unexpended funds shall be lapsed to the general fund.

SECTION 28. Provided that of the general fund appropriation for health care payments (HMS 230), the sum of $1,000,000 for fiscal year 1999-2000 shall be expended for modifications to the medicaid management information system (MMIS); provided further that any unexpended funds shall be lapsed to the general fund; provided further that the department of human services shall submit a report on expenditures, status, and projected needs for the medicaid management information system and the Hawaii automated welfare information system; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 29. Provided that the child support enforcement services (ATG 500) shall prepare and submit a report that shall include, but not be limited to, the following information:

(1) Status and measures of effectiveness of the implementation of the automated child support enforcement (KEIKI) system;
(2) Effectiveness of the agency in addressing problems of erroneous determinations, clients' inability to reach child support enforcement agency staff by telephone, and other client problems;
(3) Recommendations concerning the necessary measures to further improve the performance of the child support enforcement agency in meeting the needs of its clients;

provided further that the child support enforcement agency shall submit a report to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 30. Provided that of the general fund appropriation for general support for health care payments (HMS 902), the sum of $1,000,000 for fiscal year 1999-2000 and the sum of $1,000,000 for fiscal year 2000-2001 may be expended for both medical and psychiatric initial evaluations and reevaluations; and provided further that any unexpended funds shall be lapsed to the general fund.

SECTION 31. Provided that of the general fund appropriation for general support for health care payments (HMS 902), the sum of $200,000 for fiscal year 1999-2000 shall be expended for the design of a Medicaid managed long-term care demonstration project; provided further that the funds shall be used to:

(a) Review and update current information gathered to date on state Medicaid managed care programs for the provision of Medicaid managed long-term care services; and
(b) Develop a planning document for the design of a Medicaid managed long-term care demonstration project to include, but not be limited to:
    (1) Identifying of preliminary resource needs;
    (2) Developing a request for proposals for the actuarial studies required for the design and implementation of a Medicaid managed long-term care demonstration project;
    (3) Developing a workplan for the design of a Medicaid managed long-term care demonstration project;
    (4) Developing a list of changes to the current infrastructure that may be necessary to accommodate a Medicaid managed long-term care demonstration project; and
    (5) Beginning the development of a Medicaid waiver.

EDUCATION

SECTION 32. Provided that of the general fund appropriation for school-based budgeting (EDN 100), not less than the sum of $4,370,390 for fiscal year 1999-2000 shall be expended for the purpose of allocating regular education teachers based on the inclusion of special education students in the regular education classroom; and provided further that each special education student placed in a regular education class for either part of the school day or all of the school day shall count as one student in the regular education classroom.

SECTION 33. Provided that the department of education shall submit a detailed report for all appropriations, allocations, and expenditures for the following categorical programs in comprehensive school support services (EDN 150):

1) special education;
2) Felix consent decree; and
3) comprehensive student support services;

provided further that this report shall be prepared according to the department of education's lowest level program identification codes; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 34. Provided that of the general fund appropriation for comprehensive school support services (EDN 150), the sum of $143,048,713 for fiscal year 1999-2000 and $156,589,587 for fiscal year 2000-2001 shall be distributed on a pro-rata basis to each school district to provide instructional and program support to Individuals with Disabilities Education Act (IDEA) students; provided further that based on the projected IDEA student enrollment of 22,400 in fiscal year 1999-2000, the per pupil costs distributed to each district shall be not less than $5,018 and based on the projected IDEA student enrollment of 23,000 in fiscal year 2000-2001, the per pupil costs distributed to each district shall be not less than $5,330; and provided further that funds in addition to the pro-rata share shall be provided for children that require private school placement or services that far exceed the pro-rata cost.

SECTION 35. Provided that the department of education shall submit a report to the legislature identifying all ten-month, twelve-month, and other employees in adult education, and their corresponding salary levels; provided further that the department shall develop a plan to convert the existing ten-month adult education operation into a twelve-month operation; and provided further that this report and plan shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 36. Provided that the auditor shall conduct a study that compares the salary structure of state employees employed by the department of education under program identification numbers EDN 100, EDN 200, EDN 300, EDN 400, and EDN 500 with state employees not employed by the department of education but who perform similar work functions; provided further that the study shall include, as appropriate, comparisons among department of education positions, between department of education positions and other state positions, and between state employee and private and public contractor compensations levels; and provided further that the auditor shall report the results of this study, including any anomalies in any salary structures, to the legislature no later than twenty days prior to the convening of the 2000 regular session.

HIGHER EDUCATION

SECTION 37. Provided that of the general fund appropriation for small business development (UOH 220), the sum of $390,000 for fiscal year 1999-2000 and the sum of $390,000 for fiscal year 2000-2001 shall be used as a state match for federal funds to operate the small business development center and business research library.

SECTION 38. Provided that of the general fund appropriation for the university of Hawaii, the sum of $5,000 each for fiscal year 1999-2000 and the sum of $5,000 each for fiscal year 2000-2001 may be expended at the discretion of the president, board of regents, and senior vice president and chancellor for community colleges.

CULTURE AND RECREATION

SECTION 39. Provided that of the special fund appropriation for spectator events and shows (AGS 889), the sum of $2,500 for fiscal year 1999-2000 and the sum of $2,500 for fiscal year 2000-2001 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

PUBLIC SAFETY

SECTION 40. Provided that of the general fund appropriation for general administration (PSD 900), the sum of $20,046,400 for fiscal year 1999-2000 and the sum of $20,046,400 for fiscal year 2000-2001 shall be expended for the transportation and necessary operating costs of housing approximately 1,189 inmates in fiscal year 1999-2000 and approximately 1,189 inmates in fiscal year 2000-2001 in mainland based correctional facilities; provided further that any unencumbered and unexpended funds shall be lapsed to the general fund; and provided further that the department of public safety shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 41. Provided that the department of public safety shall submit a detailed staffing plan to the legislature no later than twenty days prior to the convening of the 2000 regular session including but not limited to a listing of and number of full-time equivalent vacancies by means of financing and funding amounts and how and when the department intends to fill its permanent/temporary/unbudgeted temporary positions; provided further that the plan shall include but not be limited to how the department intends to prevent its overtime cost overruns, ways to better manage its staffing needs per facility statewide and reasons for the vacancies and remedies to address the problems; provided further that fiscal year 2000-2001 funding for vacancies shall be contingent upon the staffing plan update and plan for improvement, and that the report shall include remedial actions undertaken to curtail and reduce the hours of overtime and any other problems; and provided further that a report detailing the improvements to correct the department's overtime and vacancy deficiencies shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 42. Provided that the auditor shall conduct a management and financial audit of the department of public safety to include, but not be limited to, the department's planning, management, staffing, and expenditures for facilities, contracts, litigation, and other operational requirements; and provided further that the

auditor shall submit a report of findings and recommendations to the legislature no later than twenty days prior to the convening of the 2000 regular session.

SECTION 43. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of $150,000 for fiscal year 1999-2000 and the sum of $150,000 for fiscal year 2000-2001 shall be expended for temporary cash flow shortfalls pending receipt of federal funds; and provided further that the general fund shall be reimbursed by the amounts provided herein upon receipt of such federal funds.

SECTION 44. Provided that of the general fund appropriation for the amelioration of physical disasters program (DEF 110), the sum of $600,000 for fiscal year 1999-2000 and the sum of $600,000 for fiscal year 2000-2001 shall be expended exclusively for relief from major disasters pursuant to chapter 127-11, Hawaii Revised Statutes.

SECTION 45. Provided that conveyances and recordings (LNR 111), shall submit a detailed report by means of financing on the progress towards completion of equipment modernization in the bureau of conveyances; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

GOVERNMENT-WIDE SUPPORT

SECTION 46. Provided that the Felix operations management office shall coordinate, prepare, and submit a status report of the State's progress in meeting the requirements of the Felix v. Cayetano consent decree; provided further that this report shall include, but not be limited to, the following:

(1) An accounting of all decree related appropriations, allocations, and expenditures by means of financing and by organizational unit within each department;
(2) Status of the State's progress toward, or maintenance of, compliance with the requirements of the consent decree including, but not limited to, the following:
    (a) Number of children identified and receiving special education and mental health services from the departments of health and/or education;
    (b) Implementation of the comprehensive student support system and the provision of services through that system;
    (c) By department of education school complex, the number of children receiving special education and/or mental health services and service testing results;
    (d) Estimated costs by means of financing of all special education services to children served by the department of education, grouped by student staffing weighted ratios; and
    (e) Range and types of services available to children and adolescents with mental health needs served by the departments of education and health;

provided further that the report shall be submitted to the legislature thirty days after the end of each quarter during fiscal biennium 1999-2001; and provided further that this section shall sunset on June 30, 2001.

SECTION 47. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of $14,031 for fiscal year 1999-2000 and the

sum of $14,031 for fiscal year 2000-2001 shall be expended for the governor's "'contingency fund'' pursuant to section 37-71(f), Hawaii Revised Statutes; and provided further that such funds may be transferred to other programs and agencies and allotted, with the approval of the governor, to meet contingencies as they arise.

SECTION 48. Except as otherwise provided, the appropriation for the office of the governor (GOV 100), shall be expended at the discretion of the governor.

SECTION 49. Provided that of the general fund appropriation for Office of the Governor (GOV 100), the sum of $100,000 for fiscal year 1999-2000 and the sum of $100,000 for fiscal year 2000-2001 shall be expended for the purpose of retaining the services of an independent consultant to assess the delivery of children's mental health services and make recommendations as to how these services may be provided through the least restrictive means available without jeopardizing the quality of services; provided further that the consultant shall develop an objective assessment mechanism to appropriately identify individuals who qualify as members of the Felix Consent Decree class and to control the scope of services which are included in or prescribed by the individual education plan; provided further that the recommendations of the consultant shall be implemented by the Felix Consent Decree Operational Manager in coordination with the Department of Education and the Department of Health; provided further that the Felix Consent Decree Operational Manager shall submit reports on the independent consultant's assessment and recommendations and on the Operational Manager's progress in implementing those recommendations; provided further that these reports shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions; and provided further that any funds not expended for this purpose shall be lapsed to the general fund.

SECTION 50. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100), shall be expended at the discretion of the lieutenant governor.

SECTION 51. Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of $214,279,464 for fiscal year 1999-2000 and the sum of $234,505,137 for fiscal year 2000-2001 shall be expended for health fund premiums for actives and retirees; provided further that funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 52. Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of $3,300,000 for fiscal year 1999-2000 and the sum of $3,300,000 for fiscal year 2000-2001 shall be used for court appointed counsel; provided further that funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 53. Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of $2,552,262 for fiscal year 1999-2000 and the sum of $2,552,262 for fiscal year 2000-2001 shall be expended for witness fees and related expenses; provided further that funds shall not be

expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 54. Provided that of the general fund appropriation for supporting services-revenue collection (TAX 107), the sum of $976,475 for fiscal year 1999-2000 and the sum of $1,264,793 for fiscal year 2000-2001 shall be expended for the design, development and implementation of the integrated tax information management system; provided further that any unencumbered and unexpended funds shall be lapsed to the general fund; and provided further that the department of taxation shall submit a progress and expenditure report to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 55. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of $2,511,579 for fiscal year 1999-2000 and the sum of $2,511,579 for fiscal year 2000-2001 shall be expended to meet the requirements of the uniform disposition of unclaimed property program pursuant to chapter 523A, Hawaii Revised Statutes; provided further that funds shall not be expended for any other purpose; provided further that any unexpended funds shall be lapsed to the general fund; and provided further that the department of budget and finance shall submit a report of the number and total amount of deposits of all unclaimed property into the general fund and the number and total amount of expenditures to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 56. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of $378,949,913 for fiscal year 1999-2000 and the sum of $398,999,648 for fiscal year 2000-2001 shall be expended for interest and principal on general obligation bonds; provided further that funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 57. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of $5,000 for fiscal year 1999-2000 and the sum of $5,000 for fiscal year 2000-2001 may be established as a separate account for a bond improvement protocol fund to be expended at the discretion of the director of finance for promotion and improvement of the state and counties' bond rating and sales.

SECTION 58. Provided that of the general fund appropriation for legal services (ATG 100), the sum of $83,193 for fiscal year 1999-2000 and the sum of $70,356 for fiscal year 2000-2001 shall be expended for additional temporary positions in the collections unit to collect delinquent amounts owed to the state; provided further that the delinquent amounts collected are expected to exceed the full cost of such positions, which shall include, but not be limited to, the cost of salaries, fringe benefits, and other appropriate costs; and provided further that the department of the attorney general shall submit a collections report to the legislature no later than twenty days prior to the convening of the 2001 regular session.

SECTION 59. Provided that of the general fund appropriation for legal services (ATG 100), the sum of $100,000 for fiscal year 1999-2000 and the sum of

$100,000 for fiscal year 2000-2001 shall be expended for the purpose of hiring private legal counsel to review the recommendations of the Felix Consent Decree independent consultant hired under section 49 of this Act and to review the actions taken by the Felix Consent Decree Operational Manager, the Department of Education, and the Department of Health in implementing those recommendations; provided further that the private legal counsel shall advise the Felix Consent Decree Operational Manager, the Department of Education, and the Department of Health with respect to whether or not their implementation program ensures substantial compliance with the consent decree and federal law; provided further that the private legal counsel, in consultation with the Attorney General, the Felix Consent Decree Operational Manager, the Superintendent of Education, and the Director of Health, shall litigate issues that the private legal counsel determines to be appropriate and necessary; provided further that the private legal counsel shall be assigned to and housed in the Felix Consent Decree Operational Manager's office; and provided further that any funds not expended for this purpose shall lapse to the general fund.

SECTION 60. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of $4,993,726 for fiscal year 1999-2000 and the sum of $4,993,726 for fiscal year 2000-2001 shall be expended for workers' compensation claims; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for workers' compensation claim payments to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 61. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of $2,631,049 for fiscal year 1999-2000 and the sum of $2,631,049 for fiscal year 2000-2001 shall be expended for unemployment compensation claims of former state employees; provided further than any unrequired and unencumbered funds shall be lapsed to the general fund; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for unemployment compensation claim payments to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 62. Provided that of the general fund appropriation for retirement (BUF 141), the sum of ~~$189,228,048~~ $106,425,888[2] for fiscal year 1999-2000 and the sum of ~~$192,131,046~~ $162,111,766[2] for fiscal year 2000-2001 shall be expended only for the following purposes:

Purpose	FY 1999-2000	FY 2000-2001
	3,633,760	57,790,720
Pension accumulation	$ ~~86,435,920~~[2]	$ ~~87,810,000~~[2]
Social security and medicare contributions	$ 102,792,128	$ 104,321,046;

provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 63. Provided that for office leasing (AGS 223), a plan (including costs by means of financing and by department) to reduce lease costs and a progress

report on implementation of that plan, shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

PART IV. CAPITAL IMPROVEMENT PROGRAM PROJECTS

SECTION 64. **CAPITAL IMPROVEMENT PROJECTS AUTHORIZED.** The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient for implementation; provided that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
A. ECONOMIC DEVELOPMENT							
BED113 - TOURISM							
1.	HTA01B	HAWAII FILM STUDIO IMPROVEMENTS, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE HAWAII FILM STUDIO. APPROPRIATIONS MAY BE USED TO REIMBURSE PRIVATE ORGANIZATIONS FOR IMPROVEMENTS MADE. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER COST ELEMENT.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		780			
		EQUIPMENT		75			
		TOTAL FUNDING	BED	857C			C
2.	HTA02	HALEIWA FILM PRODUCTION FACILITY, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FILM PRODUCTION FACILITY IN HALEIWA, OAHU. APPROPRIATIONS MAY BE USED TO REIMBURSE PRIVATE ORGANIZATIONS FOR IMPROVEMENTS MADE. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER COST ELEMENT.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		864			
		EQUIPMENT		42			
		TOTAL FUNDING	BED	908C			C
3.	LYMAN	HOUSE MEMORIAL MUSEUM, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN FOR THE REDESIGNING OF THE GALLERY EXHIBIT PROJECT AND FOR THE HISTORIC HOUSE RESTORATION. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN		100			
		TOTAL FUNDING	BED	100C			C
BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION							
4.		WEST KAUAI TECHNOLOGY AND VISITOR CENTER, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DEVELOPMENT OF A SECOND BUILDING AT THE WEST KAUAI TECHNOLOGY AND VISITOR CENTER.					
		PLANS		20			
		LAND		300			
		DESIGN		340			
		CONSTRUCTION		1,240			
		EQUIPMENT		100			
		TOTAL FUNDING	BED	2,000C			C
AGR141 - AGRICULTURAL RESOURCE MANAGEMENT							
5.	HA0001	DRAINAGE IMPROVEMENTS, WAIMANALO IRRIGATION SYSTEM, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF DRAINAGE IMPROVEMENTS, CONSISTING OF A SEDIMENT BASIN RESERVOIR TOGETHER WITH APPURTENANT WORKS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		50			
		LAND		25			
		DESIGN		100			
		CONSTRUCTION		475			
		TOTAL FUNDING	AGR	425C			C
			AGR	225N			N
6.	980002	LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS, INCLUDING DRAINAGE AND INFRASTRUCTURE WITHIN THE WAIPIO VALLEY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		20		20	
		LAND		100		50	
		DESIGN		50		50	
		CONSTRUCTION		2,500		2,500	
		TOTAL FUNDING	AGR	1,170C		1,120C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
			AGR	1,500N		1,500N	
7.		WOOD VALLEY AGRICULTURAL WATER SYSTEM, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION TO CONSTRUCT AND UPGRADE AN AGRICULTURAL WATER PIPELINE AND 150,000 GALLON RESERVOIR TO SERVE AGRICULTURAL NEEDS IN WOOD VALLEY, KA'U DISTRICT. PROJECT TO INCLUDE ANY RELATED OR INCIDENTAL WORK.							
		PLANS		2			
		DESIGN		5			
		CONSTRUCTION		75		68	
		TOTAL FUNDING	AGR	82C		68C	
8.		AGRICULTURAL WATER SYSTEM, MAUI					
		PLANS FOR MASTER PLANNING OF AN AGRICULTURAL WATER SUPPLY AND DELIVERY SYSTEM FOR UPCOUNTRY, MAUI.					
		PLANS		200			
		TOTAL FUNDING	AGR	200C			C
AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE							
9.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, AND OTHER REQUIREMENTS FOR DEPARTMENT OF AGRICULTURE FACILITIES, STATEWIDE.					
		PLANS		1			
		DESIGN		78			
		CONSTRUCTION		720			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	800C			C
LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE							
10.		FEED MILL LABORATORY, HAWAII					
		CONSTRUCTION FOR A FEED MILL LABORATORY AT THE UNIVERSITY OF HAWAII AT HILO'S PANAEWA AGRICULTURAL FARM. PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F.					
		CONSTRUCTION		804			
		TOTAL FUNDING	LNR	804C			C
BED120 - ENERGY DEVELOPMENT AND MANAGEMENT							
11.	NELH10	NELHA ONSHORE DISTRIBUTION SYSTEM, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NOMINAL 55'' DIAMETER DEEP AND SURFACE SEAWATER PIPELINES AND ONSHORE DISTRIBUTION SYSTEM TO PROVIDE SEAWATER TO TENANTS LOCATED IN THE HOST PARK AREA OF NELHA.					
		PLANS		30		5	
		DESIGN		60		10	
		CONSTRUCTION		1,924		4,995	
		EQUIPMENT		4,657		3,693	
		TOTAL FUNDING	BED	6,671C		8,703C	
LNR141 - WATER AND LAND DEVELOPMENT							
12.	J36	LEEWARD POTABLE WATER WELL, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A POTABLE WATER WELL AND ITS DEVELOPMENT, TO INCLUDE CASING INSTALLATION, PUMP CONTROLS, AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS		50			
		LAND		1			
		DESIGN		200			
		CONSTRUCTION				2,000	
		TOTAL FUNDING	LNR	251C		2,000C	
13.	G4317H	WINDWARD WELL DEVELOPMENT, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PUMP CONTROLS, CONNECTING PIPELINE AND RELATED WORK.					
		PLANS		50			
		LAND		1			
		DESIGN		200			
		CONSTRUCTION				2,000	
		TOTAL FUNDING	LNR	251C		2,000C	
14.		REDUCE VEHICLE CONTAMINANTS, OAHU					
		CONSTRUCTION TO REDUCE VEHICLE CONTAMINANTS IN ACCORDANCE WITH THE ALA WAI CANAL WATERSHED IMPROVEMENT PROJECT MANAGEMENT AND IMPLEMENTATION PLAN. PROJECT TO INCLUDE THE INSTALLATION OF ABSORBENT MAT FILTERS IN SELECTED DRAIN CATCH BASINS TO TEST THEIR EFFECTIVENESS IN REMOVING CONTAMINANTS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES					
		CONSTRUCTION		250			
		TOTAL FUNDING	LNR	250C			C
15.		SEDIMENT RETENTION BASINS FOR MANOA AND PALOLO STREAMS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		PLANS FOR SEDIMENT RETENTION BASINS FOR DISCHARGE FROM MANOA AND PALOLO STREAMS. THIS PROJECT IS IN ACCORDANCE WITH THE ALA WAI CANAL WATERSHED IMPROVEMENT PROJECT MANAGEMENT AND IMPLEMEMTATION PLAN.					
		PLANS		250			
		TOTAL FUNDING	LNR	250C			C
16.		KANAHA STREAM RESORATION AND LANDSCAPING, OAHU					
		CONSTRUCTION AND EQUIPMENT TO STABILIZE ERODING STREAM BANKS OF KANAHA STREAM. PROJECT TO INCLUDE STORM DRAIN FILTERS, SIGNAGE, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION		29			
		EQUIPMENT		1			
		TOTAL FUNDING	LNR	30C			C
B. EMPLOYMENT							
LBR903 - OFFICE OF COMMUNITY SERVICES							
1.		ORI ANUENUE HALE INC., OAHU					
		DESIGN AND CONSTRUCTION FOR THE TRAINING FACILITIES OF ORI, ANUENUE HALE, INC. PROJECT TO INCLUDE TRAINING CENTERS AND SPACES FOR SUPPORT SERVICES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN		150			
		CONSTRUCTION		800			
		TOTAL FUNDING	LBR	950C			C
2.		HONOLULU COMMUNITY ACTION PROGRAM, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ACQUISITION OF A COMMUNITY SERVICES CENTER FOR HONOLULU COMMUNITY ACTION PROGRAM, INC. TO PROVIDE SELF-SUFFICIENCY PROGRAMS. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.					
		PLANS		10			
		LAND		1,008			
		DESIGN		200			
		CONSTRUCTION		757			
		EQUIPMENT		50			
		TOTAL FUNDING	LBR	1,250C			C
			LBR	150R			R
			LBR	625S			S
C. TRANSPORTATION FACILITIES							
TRN102 - HONOLULU INTERNATIONAL AIRPORT							
1.	A10A	HIA, TERMINAL ROADWAY IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		DESIGN OF PEDESTRIAN RAILING, TRAFFIC SIGNAL, IMPROVED LIGHTING AND OTHER MISCELLANEOUS IMPROVEMENTS AT THE GROUND AND SECOND LEVEL ROADWAYS.					
		DESIGN		200			
		TOTAL FUNDING	TRN	200B			B
2.	A11D	HIA, CARGO FACILITY SITE PREPARATION AND APRON, OAHU					
		DESIGN OF SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A CARGO FACILITY AT THE NORTH RAMP.					
		DESIGN		400			
		TOTAL FUNDING	TRN	400B			B
3.	A41B	HIA, EWA CONCOURSE CONCESSION IMPROVEMENTS, OAHU					
		CONSTRUCTION TO EXPAND AND RENOVATE THE EWA CONCOURSE CONCESSION SPACE.					
		CONSTRUCTION		1,100			
		TOTAL FUNDING	TRN	1,100B			B
4.	A41E	HIA, DIAMOND HEAD CONCOURSE, PHASE I, OAHU					
		CONSTRUCTION FOR A THREE AND A HALF GATE EXTENSION TO THE DIAMOND HEAD CONCOURSE.					
		CONSTRUCTION				56,000	
		TOTAL FUNDING	TRN		E	56,000	E
5.	A41J	HIA, PUBLIC TOILET AND CUSTODIAL SUPPORT FACILITY PHASE II, OAHU					
		DESIGN FOR RENOVATION OF EXISTING PUBLIC RESTROOMS AND CUSTODIAL FACILITIES THROUGHOUT THE AIRPORT.					
		DESIGN		460			
		TOTAL FUNDING	TRN	460B			B
TRN111 - HILO INTERNATIONAL AIRPORT							
6.	B10L	HILO INT'L AIRPORT DRAINAGE AND ROAD IMPROVEMENTS, HAWAII					
		DESIGN FOR DRAINAGE AND ROAD RECONSTRUCTION OF BRIG ROAD ON THE AIRPORT.					
		DESIGN		150			
		TOTAL FUNDING	TRN	150B			B
7.	B10M	HILO INT'L AIRPORT ARFF FACILITY IMPROVEMENTS, HAWAII					
		DESIGN FOR IMPROVEMENTS TO SLEEPING QUARTERS, OFFICE STORAGE, TRAINING, DECONTAMINATION, AND EXERCISE ROOMS AT THE AIRPORT RESCUE AND FIRE FIGHTING (ARFF) STATION.					
		DESIGN		200			
		TOTAL FUNDING	TRN	200B			B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
TRN131 - KAHULUI AIRPORT							
8.	D08E	KAHULUI AIRPORT AVIATION CARGO APRON, TAXIWAY AND BUILDING, MAUI					
		DESIGN AND CONSTRUCTION FOR AN AVIATION FACILITY INCLUDING AIRCRAFT PARKING, TAXIWAY CONNECTIONS, GENERAL CARGO BUILDING, AND NECESSARY ACCESS AND PARKING.					
		DESIGN		100			
		CONSTRUCTION		13,600			
		TOTAL FUNDING	TRN	13,700B			B
9.	D08G	KAHULUI AIRPORT TERMINAL HARDSTANDS IMPROVEMENTS, MAUI					
		DESIGN FOR AN EXTENSION OF THE EXISTING TERMINAL CONCRETE HARDSTANDS.					
		DESIGN		100			
		TOTAL FUNDING	TRN	100B			B
TRN161 - LIHUE AIRPORT							
10.	E03H	LIHUE AIRPORT MAINTENANCE BASEYARD IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR A THREE BAY STORAGE FACILITY AT THE MAINTENANCE BASEYARD.					
		CONSTRUCTION		200			
		TOTAL FUNDING	TRN	200B			B
TRN195 - AIRPORTS ADMINISTRATION							
11.	F04J	AIRPORT PLANNING STUDY, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, DEVELOPMENT PLANS, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.					
		PLANS		1,500		1,500	
		TOTAL FUNDING	TRN	1,500B		1,500B	
12.	F04K	HILO INT'L AIRPORT ENVIRONMENTAL IMPACT STATEMENT, HAWAII					
		PLANS FOR AN ENVIRONMENTAL IMPACT STATEMENT AT HILO INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		800			
		TOTAL FUNDING	TRN	500B			B
			TRN	300N			N
13.	F04L	AIRPORT PAVEMENT MANAGEMENT SYSTEM, STATEWIDE					
		PLANS FOR A PAVEMENT MANAGEMENT SYSTEM NEEDED TO COMPLY WITH FAA REQUIREMENTS FOR LARGE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		PLANS		5,000			
		TOTAL FUNDING	TRN	500B			B
			TRN	4,500N			N
14.	F04M	AIRPORT GEOGRAPHIC INFORMATION SYSTEM PHASE II, STATEWIDE					
		PLANS NEEDED TO POPULATE DATA INTO THE AIRPORTS DIVISION GEOGRAPHIC INFORMATION SYSTEM (GIS) FOR HONOLULU INT'L, KONA INT'L AT KEAHOLE, HILO INT'L, WAIMEA-KOHALA, UPOLU, KAPALUA WEST MAUI, HANA, LANAI, MOLOKAI, KALAUPAPA, DILLINGHAM, LIHUE, AND PORT ALLEN AIRPORT.					
		PLANS		1,000			
		TOTAL FUNDING	TRN	1,000B			B
15.	F04N	AIRPORT ENVIRONMENTAL SERVICES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL SERVICES AT THE STATEWIDE AIRPORT SYSTEM INCLUDING CESSPOOL AND INJECTION WELL CLOSURE, LABORATORY TESTS, ENVIRONMENTAL SITE ASSESSMENTS, AND OTHER RELATED ENVIRONMENTAL SERVICES.					
		PLANS		100		100	
		DESIGN		200		200	
		CONSTRUCTION		300		300	
		TOTAL FUNDING	TRN	600B		600B	
16.	F06G	LAND ACQUISITION, STATEWIDE					
		LAND ACQUISITION FOR AVIGATION EASEMENTS, PROPERTY ACQUISITION, AND RELATED COSTS SUCH AS TITLE SEARCH, BOUNDARY SURVEYS, AND LAND APPRAISALS AT AIRPORTS STATEWIDE.					
		LAND		100		100	
		TOTAL FUNDING	TRN	100B		100B	
17.	F06H	KAHULUI AIRPORT LAND ACQUISITION AND AVIGATION EASEMENT, MAUI					
		LAND ACQUISITION AND AVIGATION EASEMENT FOR THE RUNWAY APPROACH LIGHTING SYSTEM AT KAHULUI AIRPORT.					
		LAND		500			
		TOTAL FUNDING	TRN	500B			B
18.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS		144		144	
		DESIGN		726		726	
		CONSTRUCTION		880		880	
		TOTAL FUNDING	TRN	1,750B		1,750B	
19.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION OF MISCELLANEOUS IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND UNANTICIPATED PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.					
		DESIGN		300		300	
		CONSTRUCTION		2,700		2,700	
		TOTAL FUNDING	TRN	3,000B		3,000B	
20.	F08N	AIRPORT ARCHITECTURAL BARRIER REMOVAL PHASE II, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL AT KAHULUI, KAPALUA-WEST MAUI, HANA, MOLOKAI, KALAUPAPA, DILLINGHAM, WAIMEA-KOHALA, HILO INTERNATIONAL, KONA INTERNATIONAL AIRPORT AT KEAHOLE, UPOLU, LIHUE, PORT ALLEN, AND HONOLULU INTERNATIONAL AIRPORT.					
		DESIGN		500			
		CONSTRUCTION		1,200		5,100	
		TOTAL FUNDING	TRN	1,700B		5,100B	
21.	F08O	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE					
		CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE.					
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	250B		250B	
TRN301 - HONOLULU HARBOR							
22.	J01	PIERS 39-40 LAND ACQUISITION, HONOLULU HARBOR, OAHU					
		LAND ACQUISITION AT PIERS 39-40 TO ACCOMMODATE THE EXPANSION OF MARITIME ACTIVITIES AT HONOLULU HARBOR.					
		LAND		5,500			
		TOTAL FUNDING	TRN	5,500E			E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
23.	J04	IMPROVEMENTS TO FACILITIES AT PIERS 19-29, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO YARD AND PIER AREAS INCLUDING EXCURSION VESSEL FACILITIES, UTILITIES, ROADWAYS, PAVED PARKING, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION		2,750			
		TOTAL FUNDING	TRN	2,750B			B
24.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION		15,000			
		TOTAL FUNDING	TRN	15,000E			E
25.	J09	NAVIGATIONAL IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS OF THE NAVIGATIONAL AREAS AT HONOLULU HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		525			
		TOTAL FUNDING	TRN	525B			B
26.	J20	REPLACEMENT OF FENDERS AT PIER 40, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS INCLUDING REPLACEMENT OF FENDERING SYSTEM AND OTHER IMPROVEMENTS.					
		DESIGN		25			
		CONSTRUCTION		950			
		TOTAL FUNDING	TRN	975B			B
27.	J23	PASSENGER TERMINAL IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES FOR THE ACCOMMODATION OF PASSENGER FERRY AND CRUISE PASSENGERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		250			
		CONSTRUCTION		3,500			
		TOTAL FUNDING	TRN	750B			B
			TRN	3,000N			N
28.	J30	DREDGING OF BERTHING AREAS, HONOLULU HARBOR, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN AND CONSTRUCTION FOR THE DREDGING OF BERTHING AREAS AT PIERS 38, 39, AND 51A IN HONOLULU HARBOR, AND OTHER IMPROVEMENTS.					
		DESIGN		150			
		CONSTRUCTION				1,300	
		TOTAL FUNDING	TRN	150B		1,300B	
29.	J33	KAPALAMA MILITARY RESERVATION, HONOLULU HARBOR, OAHU					
		LAND ACQUISITION TO ACCOMMODATE THE EXPANSION OF MARITIME ACTIVITIES AT HONOLULU HARBOR.					
		LAND		8,190			
		TOTAL FUNDING	TRN	8,190B			B
30.	J38	MULTI-PURPOSE PIER AT PIER 12, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION OF A MULTI-PURPOSE PIER STRUCTURE AT PIER 12 INCLUDING APPURTENANCES AND OTHER IMPROVEMENTS.					
		DESIGN		150			
		CONSTRUCTION				800	
		TOTAL FUNDING	TRN	150B		800B	
TRN303 - KALAELOA BARBERS POINT HARBOR							
31.	J15	SHIP REPAIR FACILITIES, BARBERS POINT HARBOR, OAHU					
		PLANS AND DESIGN FOR IMPROVEMENTS INCLUDING UTILITIES, LIGHTING, ACCESS ROADWAYS, DREDGING, AND OTHER RELATED IMPROVEMENTS.					
		PLANS		250			
		DESIGN		250			
		TOTAL FUNDING	TRN	500B			B
TRN305 - KEWALO BASIN							
32.	J12	KEWALO BASIN IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF CATWALKS, IMPROVEMENTS TO UTILITIES, REMOVAL OF UNDERGROUND STORAGE TANKS, AND OTHER IMPROVEMENTS.					
		DESIGN		50			
		CONSTRUCTION		1,650			
		TOTAL FUNDING	TRN	1,700B			B
TRN311 - HILO HARBOR							
33.	L02	BARGE TERMINAL IMPROVEMENTS, HILO HARBOR, HAWAII					
		DESIGN FOR IMPROVEMENTS TO BARGE TERMINAL PIER, YARD, ROADWAY, UTILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN		600			
		TOTAL FUNDING	TRN	600B			B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
34.	L06	HILO HARBOR CONTAINER FACILITY IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR HARBOR IMPROVEMENTS INCLUDING MODIFICATIONS TO PIERS, YARDS, SHEDS, UTILITIES, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION				3,500	
		TOTAL FUNDING	TRN		B	3,500	B
TRN331 - KAHULUI HARBOR							
35.	J20	KAHULUI HARBOR PIER IMPROVEMENT, MAUI					
		CONSTRUCTION FOR NEW PIERS AND STORAGE YARDS, STRENGTHENING OF EXISTING PIERS AND YARDS, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION		5,000			
		TOTAL FUNDING	TRN	5,000	E		E
36.	M09	KAHULUI HARBOR BARGE TERMINAL IMPROVEMENTS, MAUI					
		CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN		B	3,000	B
TRN363 - PORT ALLEN HARBOR							
37.	K03	PORT ALLEN HARBOR IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR A PASSENGER LOADING DOCK AND OTHER IMPROVEMENTS.					
		DESIGN		250			
		CONSTRUCTION				1,500	
		TOTAL FUNDING	TRN	250	B	1,500	B
TRN351 - KAUMALAPAU HARBOR							
38.		KAUMALAPAU BREAKWATER IMPROVEMENTS, LANAI					
		CONSTRUCTION FOR THE RECONSTRUCTION OF THE BREAKWATER AND OTHER SITE IMPROVEMENTS AT KAUMALAPAU HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		3,000			
		TOTAL FUNDING	TRN	1,500	B		B
			TRN	1,500	R		R
TRN395 - HARBORS ADMINISTRATION							
39.	I00	HARBOR DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS		750		750	
		TOTAL FUNDING	TRN	750B		750B	
40.	I01	HARBOR PLANNING, STATEWIDE					
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS		250		250	
		TOTAL FUNDING	TRN	250B		250B	
41.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN		75		75	
		CONSTRUCTION		200		200	
		TOTAL FUNDING	TRN	275B		275B	
42.	I05	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN		50		50	
		CONSTRUCTION		150		150	
		TOTAL FUNDING	TRN	200B		200B	
43.	I08	REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS, STATEWIDE.					
		DESIGN		75			
		CONSTRUCTION				500	
		TOTAL FUNDING	TRN	75B		500B	
44.	I09	VIDEO MONITORING SYSTEM FOR HONOLULU HARBOR AND BARBERS POINT HARBOR, OAHU					
		DESIGN AND CONSTRUCTION OF A COMMUNICATIONS SYSTEM TO MONITOR THE MOVEMENT AND POSITIONING OF VESSELS.					
		DESIGN		75			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		CONSTRUCTION		300			
		TOTAL FUNDING	TRN	375B			B
45.	I10	REMOVAL OF ARCHITECTURAL BARRIERS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF BARRIERS TO PERSONS WITH DISABILITIES AT STATE COMMERCIAL HARBOR FACILITIES.					
		DESIGN		100			
		CONSTRUCTION		500			
		TOTAL FUNDING	TRN	600B			B
46.	I11	ENVIRONMENTAL MONITORING FOR HARBOR IMPROVEMENTS, STATEWIDE					
		CONSTRUCTION FOR CONSULTANT SERVICES FOR ENVIRONMENTAL MONITORING DURING CONSTRUCTION PROJECTS AT MISCELLANEOUS STATEWIDE HARBOR FACILITIES.					
		CONSTRUCTION		100			
		TOTAL FUNDING	TRN	100B			B
47.		MOLOKAI-MAUI FERRY SERVICE, MAUI					
		DESIGN AND CONSTRUCTION FOR A COMMUTER FERRY VESSEL TO BE USED BETWEEN MOLOKAI AND MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		250			
		CONSTRUCTION		3,500			
		TOTAL FUNDING	TRN	750B			B
			TRN	3,000N			N
TRN501 - OAHU HIGHWAYS							
48.	R53	KAMEHAMEHA HIGHWAY, HELEMANO-WAILUA JUNCTION TO HALEIWA BEACH PARK, OAHU					
		LAND AND CONSTRUCTION FOR ENHANCED WETLANDS IN THE VICINITY OF UKOA POND. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		435			
		CONSTRUCTION		2,500			
		TOTAL FUNDING	TRN	935E			E
			TRN	2,000N			N
49.	S011	HAUULA BASEYARD IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR A NEW BASEYARD FACILITY, INCLUDING OFFICE BUILDING, MAINTENANCE STORAGE BUILDING, SEPTIC TANK, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION		120			
		TOTAL FUNDING	TRN	120E			E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
50.	S074	OAHU BIKEWAYS, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR A MULTI-USE PATH FROM THE VICINITY OF WAIPAHU DEPOT ROAD TO HAKIMO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		3,780			
		CONSTRUCTION		1,550			
		TOTAL FUNDING	TRN	1,065E	E		
			TRN	4,265N	N		
51.	S230	WAIAHOLE BRIDGE REPLACEMENT, KAMEHAMEHA HIGHWAY, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING CONCRETE STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		2,500			
		TOTAL FUNDING	TRN	500E	E		
			TRN	2,000N	N		
52.	S239	FREEWAY MANAGEMENT SYSTEM, INTERSTATE H-1, H-2, AND MOANALUA FREEWAY, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A FREEWAY MANAGEMENT SYSTEM INCLUDING INTELLIGENT TRANSPORTATION SYSTEMS TECHNOLOGIES AND INTERAGENCY COORDINATION TO MONITOR AND MANAGE TRAFFIC OPERATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		7,499		7,499	
		EQUIPMENT		1		1	
		TOTAL FUNDING	TRN	1,500E		1,500E	
			TRN	6,000N		6,000N	
53.	S248	INTERSTATE ROUTE H-1 WIDENING, WAIAWA INTERCHANGE TO HALAWA INTERCHANGE, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR THE INTERSTATE ROUTE H-1 WIDENING WESTBOUND, WAIMALU VIADUCT TO PEARL CITY OFF-RAMP. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		7,500			
		CONSTRUCTION				25,000	
		TOTAL FUNDING	TRN	1,500E		5,000E	
			TRN	6,000N		20,000N	
54.	S266	GUARDRAIL AND SHOULDER IMPROVEMENTS, VARIOUS LOCATIONS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING THE EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS, CRASH ATTENUATORS, RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		DESIGN		250		250	
		CONSTRUCTION		3,000		3,000	
		TOTAL FUNDING	TRN	850	E	850	E
			TRN	2,400	N	2,400	N
55.	S268	KAMEHAMEHA HIGHWAY, REPLACEMENT OF HALAWA STREAM BRIDGE (INBOUND), OAHU					
		CONSTRUCTION FOR REPLACEMENT OF HALAWA STREAM BRIDGE (INBOUND). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		2,820			
		TOTAL FUNDING	TRN	560	E		E
			TRN	2,260	N		N
56.	S269	KAMEHAMEHA HIGHWAY, SOUTH PUNALUU BRIDGE REPLACEMENT, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR REPLACEMENT OF SOUTH PUNALUU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		610			
		CONSTRUCTION				4,225	
		TOTAL FUNDING	TRN	125	E	845	E
			TRN	485	N	3,380	N
57.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT FLOW OF TRAFFIC.						
		DESIGN		200		200	
		CONSTRUCTION		1,000		1,000	
		TOTAL FUNDING	TRN	1,200	E	1,200	E
58.	S273	KAMEHAMEHA HIGHWAY, INTERSECTION IMPROVEMENTS AT KUILIMA DRIVE, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		CONSTRUCTION FOR A LEFT TURN LANE ON KAMEHAMEHA HIGHWAY INTO KUILIMA DRIVE AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		3,000			
		TOTAL FUNDING	TRN	720	E		E
			TRN	2,280	N		N
59.	S274	KAMEHAMEHA HWY TRAFFIC IMPROVEMENTS, KAHALUU TO WAIMEA BAY, OAHU					
		LAND ACQUISITION AND DESIGN FOR IMPROVING TRAFFIC OPERATIONS AND INCREASING SAFETY ALONG THIS STRETCH OF KAMEHAMEHA HIGHWAY. IMPROVEMENTS TO INCLUDE CONSTRUCTING PASSING AND TURNING LANES, MODIFYING EXISTING TRAFFIC SIGNALS, CONSTRUCTING SIDEWALKS, INSTALLING SIGNS, FLASHERS, AND OTHER WARNING DEVICES, AND OTHER IMPROVEMENTS.					
		LAND				500	
		DESIGN		1,000			
		TOTAL FUNDING	TRN	230	E	100	E
			TRN	770	N	400	N
60.	S275	KALANIANAOLE HIGHWAY IMPROVEMENTS, REALIGN HIGHWAY, MAKAPUU, OAHU					
		LAND ACQUISITION AND DESIGN FOR REALIGNING KALANIANAOLE HIGHWAY IN THE VICINITY OF OCEANIC INSTITUTE, MAKAPUU. IMPROVEMENTS INCLUDE CONSTRUCTING THE ROADWAY MORE INLAND FROM THE SHORELINE.					
		LAND		1			
		DESIGN		299			
		TOTAL FUNDING	TRN	300	E		E
61.	S276	KALANIANAOLE HIGHWAY IMPROVEMENTS, RETAINING WALL, MAKAPUU, OAHU					
		DESIGN FOR CONSTRUCTING AND/OR REPAIRING A RETAINING WALL ALONG KALANIANAOLE HIGHWAY IN THE VICINITY OF MAKAPUU POINT. PROJECT TO INCLUDE SUBSURFACE INVESTIGATION AND SLOPE PROTECTION.					
		DESIGN				900	
		TOTAL FUNDING	TRN		E	900	E
62.	S277	KAMEHAMEHA HIGHWAY, SIDEWALK, MILILANI, OAHU					
		CONSTRUCTION FOR A SIDEWALK AND PAVED SHOULDERS FOR BICYCLE ACCESSIBILITY ALONG KAMEHAMEHA HIGHWAY IN THE VICINITY OF MEHEULA PARKWAY TO THE VICINITY OF KUAHELANI AVENUE.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		CONSTRUCTION		1,250			
		TOTAL FUNDING	TRN	1,250E			E
63.	S280	INTERSTATE ROUTE H-1, PEARL CITY AND WAIMALU VIADUCT IMPROVEMENTS, OAHU					
		PLANS FOR A STUDY TO ASSESS THE PEARL CITY AND WAIMALU VIADUCTS' STRUCTURAL AND FUNCTIONAL CAPACITIES AND TO IDENTIFY IMPROVEMENT OPTIONS.					
		PLANS		200			
		TOTAL FUNDING	TRN	200E			E
64.	S281	WAHIAWA BASEYARD IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR OFFICE BUILDING, VEHICLE STORAGE STRUCTURE, ABOVE GROUND FUEL STORAGE TANK, AND IMPROVEMENTS TO THE EXISTING FACILITY.					
		DESIGN		100			
		CONSTRUCTION				650	
		TOTAL FUNDING	TRN	100E		650E	
65.	S282	ROCKFALL PROTECTION AT VARIOUS LOCATIONS, OAHU					
		PLANS FOR STUDIES TO DETERMINE ROCKFALL/ SLOPE PROTECTION MITIGATION MEASURES AT VARIOUS LOCATIONS.					
		PLANS		350			
		TOTAL FUNDING	TRN	350E			E
66.	S283	NIMITZ HIGHWAY IMPROVEMENTS, KALIHI STREET TO SAND ISLAND ACCESS ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERSECTION AND TRAFFIC SIGNAL IMPROVEMENTS FROM KALIHI STREET TO SAND ISLAND ACCESS ROAD.					
		DESIGN		250			
		CONSTRUCTION				2,150	
		TOTAL FUNDING	TRN	250E		2,150E	
67.	S284	INTERSTATE H-1 AND H-2, DESTINATION SIGN UPGRADE/ REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING DESTINATION SIGNS AND SIGN SUPPORT STRUCTURES ON INTERSTATE ROUTES H-1 AND H-2. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		500			
		CONSTRUCTION				5,000	
		TOTAL FUNDING	TRN	50E		500E	
			TRN	450N		4,500N	
68.	S285	KAHEKILI HIGHWAY LANDSCAPING VICINITY OF KULUKEOE STREET TO HAIKU ROAD, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		DESIGN AND CONSTRUCTION FOR KAHEKILI HIGHWAY BEAUTIFICATION, INCLUDING RECONSTRUCTING THE MEDIAN, LANDSCAPING, AND IRRIGATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		300			
		CONSTRUCTION				2,500	
		TOTAL FUNDING	TRN	300	E	500	E
			TRN		N	2,000	N
69.	S286	NIMITZ HIGHWAY BIKEWAY, WAIAKAMILO ROAD TO THE H-1 FREEWAY AIRPORT VIADUCT, OAHU					
		DESIGN AND CONSTRUCTION FOR EXTENDING THE NIMITZ HIGHWAY BIKE LANE FROM WAIAKAMILO ROAD TO THE EXISTING MULTI-USE PATH UNDER THE AIRPORT VIADUCT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		225			
		CONSTRUCTION				1,500	
		TOTAL FUNDING	TRN	225	E	300	E
			TRN		N	1,200	N
70.	S287	KAMEHAMEHA HIGHWAY BIKEWAY, VICINITY OF RADFORD DRIVE TO ARIZONA MEMORIAL, OAHU					
		DESIGN AND CONSTRUCTION FOR A BIKE LANE ON KAMEHAMEHA HIGHWAY FROM THE VICINITY OF RADFORD DRIVE TO THE ARIZONA MEMORIAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		60			
		CONSTRUCTION				600	
		TOTAL FUNDING	TRN	60	E	120	E
			TRN		N	480	N
71.	S288	WILIKINA DRIVE INTERSECTION IMPROVEMENTS AT MCNAIR GATE, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS, INCLUDING INSTALLING A TRAFFIC SIGNAL AND MODIFYING THE INTERSECTION.					
		DESIGN		150			
		CONSTRUCTION				1,150	
		TOTAL FUNDING	TRN	150	E	1,150	E
72.	S289	KAMEHAMEHA HIGHWAY INTERSECTION IMPROVEMENTS AT KAMANANUI ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR INSTALLING A TRAFFIC SIGNAL SYSTEM, SIGNING, PAVEMENT MARKINGS, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		DESIGN		50			
		CONSTRUCTION				350	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	TRN		50E		350E
73.	S290	FARRINGTON HIGHWAY IMPROVEMENTS, WAIKELE ROAD TO ANIANI PLACE, OAHU					
		DESIGN AND CONSTRUCTION FOR RELOCATING A PEDESTRIAN CROSSING SIGNAL TO THE FARRINGTON HIGHWAY AND WAIKELE ROAD INTERSECTION, TRAFFIC SIGNAL SYSTEM UPGRADE, AND OTHER IMPROVEMENTS.					
		DESIGN			70		
		CONSTRUCTION					690
		TOTAL FUNDING	TRN		70E		690E
74.	S291	KANEOHE BAY DRIVE IMPROVEMENTS, VICINITY OF AUMOKU STREET TO MOKULELE DRIVE, OAHU					
		DESIGN AND CONSTRUCTION FOR ROADWAY WIDENING, LEFT TURN STORAGE LANES, DRAINAGE FACILITIES, RETAINING WALLS, SIGNING, STRIPING, AND PAVEMENT MARKINGS.					
		DESIGN			350		
		CONSTRUCTION					3,450
		TOTAL FUNDING	TRN		350E		3,450E
75.	S294	MOANALUA FREEWAY, NORTH FRONTAGE ROAD IMPROVEMENTS, OAHU					
		PLANS AND DESIGN FOR ROADWAY IMPROVEMENTS IN THE VICINITY OF ALA AOLANI STREET AND ALA KAPUNA STREET, INCLUDING IMPROVING ACCESS TO KAISER HOSPITAL.					
		PLANS			50		
		DESIGN					100
		TOTAL FUNDING	TRN		50E		100E
76.	SP9101	NORTH/SOUTH ROAD, KAPOLEI PARKWAY TO VICINITY OF INTERSTATE ROUTE H-1, OAHU					
		LAND ACQUISITION AND DESIGN FOR NORTH/ SOUTH ROAD, PHASE II, FROM FARRINGTON HIGHWAY TO VICINITY OF THE H-1 FREEWAY. IMPROVEMENTS INCLUDE A MULTI-LANE HIGHWAY AND AN INTERCHANGE AT THE H-1 FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			500		
		DESIGN			3,300		
		TOTAL FUNDING	TRN		760E		E
			TRN		3,040N		N
77.	SP9710	FARRINGTON HIGHWAY RETAINING WALL, OAHU					
		CONSTRUCTION FOR A RETAINING WALL AND DRAINAGE IMPROVEMENTS ALONG FARRINGTON HIGHWAY ABOVE THE WAIPAHU HIGH SCHOOL ATHLETIC FIELD.					
		CONSTRUCTION			400		

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		TOTAL FUNDING	TRN		400E		E
78.	X092	OAHU DISTRICT WAREHOUSE BUILDING, OAHU					
		CONSTRUCTION AT THE OAHU DISTRICT BASEYARD AND FOR THE RENOVATION OF AN EXISTING WAREHOUSE INTO A HEAVY EQUIPMENT REPAIR SHOP.					
		CONSTRUCTION			870		
		TOTAL FUNDING	TRN		870E		E
79.		FORT WEAVER ROAD WIDENING, INTERSTATE H-1 TO GEIGER ROAD, OAHU					
		PLANS FOR THE WIDENING OF FORT WEAVER ROAD FROM FOUR LANES TO SIX LANES FROM INTERSTATE ROUTE H-1 TO GEIGER ROAD.					
		PLANS			500		
		TOTAL FUNDING	TRN		500E		E
80.		WAHIAWA SECOND ACCESS ROAD, OAHU					
		PLANS AND DESIGN FOR A SECOND ACCESS ROAD TO WAHIAWA FROM HONOLULU.					
		PLANS			750		
		DESIGN			250		
		TOTAL FUNDING	TRN		1,000E		E
81.		LEEWARD COMMUNITY COLLEGE, SECONDARY EXIT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A SECONDARY EXIT FOR LEEWARD COMMUNITY COLLEGE.					
		PLANS			250		
		DESIGN			250		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,500E		E
82.		TRAFFIC CONGESTION STUDY, MOANALUA FRWY. AT FORT SHAFTER/ H-1 VIADUCT, OAHU.					
		PLANS FOR A TRAFFIC CONGESTION STUDY FOR MOANALUA FREEWAY AT FORT SHAFTER CORRIDOR AND H-1 VIADUCT.					
		PLANS			250		
		TOTAL FUNDING	TRN		250E		E
83.		AIEA INTERCHANGE BEAUTIFICATION, OAHU					
		DESIGN AND CONSTRUCTION FOR LANDSCAPING IMPROVEMENTS TO AN AREA ALONG THE AIEA INTERCHANGE TO INCLUDE THE AREA OF THE AIEA OFF-RAMP FROM MOANALUA FREEWAY, WESTBOUND, AND KAMEHAMEHA HIGHWAY ON-RAMP, EASTBOUND.					
		DESIGN			200		
		CONSTRUCTION			1,000		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	TRN	1,200E			E
84.		H-3 FREEWAY, PERMANENT KAILUA CUTOFF, OAHU					
		PLANS AND DESIGN FOR A PERMANENT KAILUA CUTOFF TO BE INTEGRATED INTO THE H-3 FREEWAY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		1			
		DESIGN		249			
		TOTAL FUNDING	TRN	250E			E
85.		CAMPUS ACCESS BIKEWAY PROJECTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR CAMPUS ACCESS BIKEWAY PROJECTS ALONG UNIVERSITY AVENUE, DOLE STREET, AND ST. LOUIS DRIVE (CAMPUS ACCESS PROJECT NUMBERS 2, 13, 14, 15, AND 16).					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		388			
		TOTAL FUNDING	TRN	390E			E
TRN511 - HAWAII HIGHWAYS							
86.	T027	HAWAII BELT ROAD: REPLACEMENT OF FIVE BRIDGES, HAMAKUA, HAWAII					
		CONSTRUCTION FOR HAWAII BELT ROAD IMPROVEMENTS, HAMAKUA. REPLACE EXISTING CONCRETE BRIDGE AT KEALAKAHA STREAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		4,600			
		TOTAL FUNDING	TRN	920E			E
			TRN	3,680N			N
87.	T077	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		110		110	
		CONSTRUCTION		1,465		1,465	
		TOTAL FUNDING	TRN	440E		440E	
			TRN	1,135N		1,135N	
88.	T080	KAWAIHAE ROAD, WAIAKA STREAM BRIDGE APPROACHES, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR REPLACING EXISTING WAIAKA STREAM BRIDGE, REALIGNING BRIDGE APPROACHES, RECONSTRUCTING THE ROUTE 19/ ROUTE 250 INTERSECTION, AND INSTALLING SAFETY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		LAND		370			
		DESIGN		260			
		CONSTRUCTION				3,940	
		TOTAL FUNDING	TRN	130E		790E	
			TRN	500N		3,150N	
89.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., HAWAII					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.						
		DESIGN		120		120	
		CONSTRUCTION		950		950	
		TOTAL FUNDING	TRN	1,070E		1,070E	
90.	T122	KAMEHAMEHA AVE. BIKEWAY, KALANIANAOLE AVE. TO HILO BAYFRONT HIGHWAY, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE ADDITION OF A BIKE LANE IN THE VICINITY OF KALANIANAOLE AVENUE TO HILO BAYFRONT HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		DESIGN		60			
		CONSTRUCTION				525	
		TOTAL FUNDING	TRN	60E		105E	
			TRN	N		420N	
91.	T123	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT HUINA ROAD, HAWAII					
		DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT VOLCANO ROAD AND HUINA ROAD. PROJECT TO PROVIDE EITHER SIGNALIZATION OR THE CONSTRUCTION OF A FULLY CHANNELIZED INTERSECTION, INCLUDING RELOCATING UTILITIES, INSTALLING SIGNS, PAVEMENT MARKERS, STRIPING, HIGHWAY LIGHTING, AND EXTENDING A DRAINAGE CULVERT.						
		DESIGN		180			
		CONSTRUCTION				1,170	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	TRN	180E		1,170E	
92.		KEAAU-PAHOA ROAD IMPROVEMENTS, HAWAII					
		PLANS AND DESIGN FOR AN ALTERNATE ACCESS ROAD. PROJECT TO INCLUDE EITHER THE EXPANSION OF KEAAU-PAHOA ROAD TO FOUR (4) LANES OR THE BUILDING OF AN ALTERNATE ROAD.					
		PLANS		60			
		DESIGN		340			
		TOTAL FUNDING	TRN	400E			E
TRN531 - MAUI HIGHWAYS							
93.	V048	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		100		100	
		CONSTRUCTION		1,590		1,590	
		TOTAL FUNDING	TRN	580E		580E	
			TRN	1,110N		1,110N	
94.	V73	PUUNENE AVENUE/MOKULELE HWY. WIDENING, KUIHELANI HWY. TO PIILANI HWY., MAUI					
		LAND ACQUISITION FOR WIDENING OF PUUNENE AVENUE AND MOKULELE HIGHWAY FROM TWO LANES TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		4,170			
		TOTAL FUNDING	TRN	835E			E
			TRN	3,335N			N
95.	V75	HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI					
		DESIGN AND CONSTRUCTION TO REMOVE OVERHANGING, PROTRUDING, AND/OR UNSTABLE ROCKS FROM THE SLOPES ABOVE HANA HIGHWAY.					
		DESIGN		250			
		CONSTRUCTION				1,550	
		TOTAL FUNDING	TRN	250E		1,550E	
96.	V82	HONOAPIILANI HWY. STABILIZING EMBANKMENT SLOPE, HONOKOWAI TO KAPALUA, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		CONSTRUCTION FOR THE STABILIZATION OF THE HIGHWAY EMBANKMENT, INCLUDING FLATTENING OF EMBANKMENT SLOPES AND CONSTRUCTING RETAINING WALLS.					
		CONSTRUCTION		1,665			
		TOTAL FUNDING	TRN	1,665E			E
97.	V83	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., MAUI					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.						
		DESIGN		100		100	
		CONSTRUCTION		960		960	
		TOTAL FUNDING	TRN	1,060E		1,060E	
98.	V84	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI					
		DESIGN FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER ROAD STRUCTURES ON HANA HIGHWAY.					
		DESIGN		85			
		TOTAL FUNDING	TRN	85E			E
99.	V85	HONOAPIILANI HIGHWAY DRAINAGE IMPROVEMENTS AT UKUMEHAME, MAUI					
		DESIGN FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES ON HONOAPIILANI HIGHWAY, INCLUDING CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS.					
		DESIGN		80			
		TOTAL FUNDING	TRN	80E			E
100.		PIILANI HIGHWAY EXPANSION, MAUI					
		DESIGN FUNDS TO IMPROVE PIILANI HIGHWAY FROM TWO LANES TO FOUR LANES BETWEEN PIIKEA AND LIPOA.					
		DESIGN		175			
		TOTAL FUNDING	TRN	175E			E
TRN541 - MOLOKAI HIGHWAYS							
101.	W08	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN AND CONSTRUCTION FOR CONSTRUCTING ASPHALT CONCRETE PAVED SHOULDERS, AND INSTALLING AND/OR UPGRADING METAL GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			75		
		CONSTRUCTION					710
		TOTAL FUNDING	TRN		75E		145E
			TRN		N		565N
TRN561 - KAUAI HIGHWAYS							
102.	X06	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI					
		DESIGN FOR WIDENING OF KAUMUALII HIGHWAY FROM LIHUE TO WEST OF MALUHIA ROAD FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		5,100			
		TOTAL FUNDING	TRN	1,020E			E
			TRN	4,080N			N
103.	X51	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			110		110
		CONSTRUCTION			1,500		1,500
		TOTAL FUNDING	TRN		565E		565E
			TRN		1,045N		1,045N
104.	X106	KUHIO HIGHWAY, MOIKEHA BRIDGE WIDENING, KAUAI					
		CONSTRUCTION FOR WIDENING MOIKEHA BRIDGE FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					1,620
		TOTAL FUNDING	TRN		E		325E
			TRN		N		1,295N
105.	X110	KUHIO HIGHWAY SHOULDER IMPROVEMENTS, PRINCEVILLE TO HAENA, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		CONSTRUCTION FOR STABILIZING AND/OR PAVING SHOULDERS; REMOVING AND INSTALLING GUARDRAILS AND REFLECTOR MARKERS; CONSTRUCTING CONCRETE GUTTERS; EXTENDING EXISTING DRAINAGE PIPES AND STRUCTURES; AND TRIMMING AND DRESSING SHOULDERS.					
		CONSTRUCTION		2,500			
		TOTAL FUNDING	TRN	2,500E			E
106.	X111	CENTRALIZED DISTRICT OFFICE AND BASEYARD COMPLEX, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR A NEW CENTRALIZED DISTRICT OFFICE AND BASEYARD COMPLEX FOR THE HIGHWAYS DIVISION, KAUAI DISTRICT OFFICE.					
		LAND		155			
		CONSTRUCTION		9,300			
		TOTAL FUNDING	TRN	9,455E			E
107.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., KAUAI					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN		100		100	
		CONSTRUCTION		865		865	
		TOTAL FUNDING	TRN	965E		965E	
108.	X115	KUHIO HIGHWAY INTERSECTION IMPROVEMENTS AT KALIHIWAI ROAD, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A LEFT TURN STORAGE LANE AT THE NORTH INTERSECTION OF KALIHIWAI ROAD AND KUHIO HIGHWAY.					
		LAND		270			
		DESIGN		120			
		CONSTRUCTION				1,200	
		TOTAL FUNDING	TRN	390E		1,200E	
TRN595 - HIGHWAYS ADMINISTRATION							
109.	S293	ALIIAIMOKU BUILDING, AIR CONDITIONING SYSTEM REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE AIR CONDITIONING SYSTEM AT THE ALIIAIMOKU BUILDING, INCLUDING REPLACING THE AIR HANDLING SYSTEM, FLOOR REINFORCEMENT, AND REMOVING AND/OR RECONSTRUCTING WALLS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		DESIGN		100			
		CONSTRUCTION		1,900			
		TOTAL FUNDING	TRN	2,000E			E
110.	X91	PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING CURB RAMPS AND BUS STOPS ON STATE HIGHWAYS AND UPGRADING THE HIGHWAYS DIVISION BUILDING FACILITIES TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		DESIGN		100		100	
		CONSTRUCTION		1,000		1,000	
		TOTAL FUNDING	TRN	300E		300E	
			TRN	800N		800N	
111.	X96	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE					
		LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS. ALSO, TO PROVIDE FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.						
		LAND		200		200	
		TOTAL FUNDING	TRN	200E		200E	
112.	X97	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS AT VARIOUS LOCATIONS.						
		DESIGN		130		130	
		CONSTRUCTION		1,560		1,560	
		TOTAL FUNDING	TRN	1,690E		1,690E	
113.	X98	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		DESIGN		375		375	
		CONSTRUCTION		2,500		2,500	
		TOTAL FUNDING	TRN	875E		875E	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
			TRN	2,000N		2,000N	
114.	X99	HIGHWAY PLANNING, STATEWIDE					
		PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH, ADVANCED PLANNING AND SCOPING OF FEDERAL-AID AND NON-FEDERAL-AID HIGHWAY PROJECTS, AND PROGRAMS AND STUDIES REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		2,250		1,750	
		TOTAL FUNDING	TRN	920E		420E	
			TRN	1,330N		1,330N	
115.	X200	TRAFFIC COUNTING STATIONS AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR INSTALLING TRAFFIC DETECTOR LOOPS, ASSOCIATED WIRING, JUNCTION BOXES, CABINETS, AND TELEMETRY STATIONS AT VARIOUS LOCATIONS ON STATE ROADWAYS, INCLUDING AUTOMATIC TRAFFIC RECORDERS AND OTHER DATA PROCESSING IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		350		100	
		CONSTRUCTION		750		1,000	
		TOTAL FUNDING	TRN	500E		300E	
			TRN	600N		800N	
116.	X220	INSTALLATION OF EMERGENCY TELEPHONES AT VARIOUS HIGHWAY LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF EMERGENCY SOLAR POWERED CELLULAR TELEPHONES ON EACH ISLAND, INCLUDING UPGRADING EXISTING CELLULAR TELEPHONES TO MEET CURRENT AMERICANS WITH DISABILITIES ACT (ADA) GUIDELINES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		75		75	
		CONSTRUCTION		750		750	
		TOTAL FUNDING	TRN	225E		225E	
			TRN	600N		600N	
117.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS HIGHWAY LOCATIONS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT ADA STANDARDS AND INSTALLING CLOSED CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		300			
		CONSTRUCTION		1,500		1,500	
		TOTAL FUNDING	TRN	600E		300E	
			TRN	1,200N		1,200N	
118.	X225	HIGHWAY DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS		1		1	
		LAND		1		1	
		DESIGN		1		1	
		CONSTRUCTION		18,547		18,547	
		TOTAL FUNDING	TRN	12,550E		12,550E	
			TRN	6,000N		6,000N	
119.	X226	CLOSEOUT OF HIGHWAY CONSTRUCTION PROJECTS, STATEWIDE					
		CONSTRUCTION FOR COMPLETION OF OUTSTANDING CONSTRUCTION PROJECTS FOR POSTING OF AS-BUILT PLANS, OUTSTANDING UTILITY BILLINGS, AND PAYMENTS TO OTHERS FOR PROJECT RELATED WORK.					
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	250E		250E	

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

1. 840801 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND, ESTABLISHED PURSUANT TO CHAPTER 342-D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION		13,935		13,935	
		TOTAL FUNDING	HTH	2,323C		2,323C	
			HTH	11,612N		11,612N	
2.	840902	STATE CAPITALIZATION GRANT, DRINKING WATER REVOLVING FUND, STATEWIDE					
		CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS TO COMPLY WITH THE SAFE DRINKING WATER ACT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION		9,136		9,136	
		TOTAL FUNDING	HTH	1,523C		1,523C	
			HTH	7,613N		7,613N	
LNR402 - FORESTS AND WILDLIFE RESOURCES							
3.	D-71	HILO BASEYARD IMPROVEMENT, HAWAII					
		EQUIPMENT FOR HYDRAULIC LIFT TO SERVICE DOFAW VEHICLES.					
		EQUIPMENT		25			
		TOTAL FUNDING	LNR	25C			C
LNR404 - WATER RESOURCES							
4.	G55D	LAHAINA MONITOR WELL, MAUI					
		CONSTRUCTION FOR A MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		CONSTRUCTION		100			
		TOTAL FUNDING	LNR	100C			C
5.	G55F	MONITOR WELL, OAHU					
		CONSTRUCTION FOR MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		CONSTRUCTION		170			
		TOTAL FUNDING	LNR	170C			C
LNR405 - CONSERVATION & RESOURCES ENFORCEMENT							
6.	H10	DOCARE MAUI - MOLOKAI BASEYARD, MOLOKAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		CONSTRUCTION FOR RENOVATION OF MOLOKAI BOATHOUSE.					
		CONSTRUCTION		35			
		TOTAL FUNDING	LNR	35C			C
LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT							
7.	950026	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS		1,560		1,560	
		TOTAL FUNDING	LNR	1,560C		1,560C	
E. HEALTH							
HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL							
1.	101801	LANAKILA HEALTH CENTER, RENOVATE TB CONTROL PROGRAM SPACE, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE THE TB CONTROL PROGRAM SPACE TO MEET INFECTION CONTROL GUIDELINES.					
		DESIGN		255			
		CONSTRUCTION				2,479	
		EQUIPMENT				75	
		TOTAL FUNDING	AGS	255C		2,554C	
HTH550 - MATERNAL & CHILD HEALTH SERVICES							
2.		KOKUA KALIHI VALLEY, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW HEALTH CENTER IN KALIHI VALLEY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS		1			
		LAND		1			
		DESIGN		1			
		CONSTRUCTION		496			
		EQUIPMENT		1			
		TOTAL FUNDING	HTH	500C			C
3.		MAUI FAMILY SUPPORT SERVICES, MAUI					
		LAND ACQUISITION FOR THE DIRECT ACQUISITION OF AN OFFICE BUILDING AND SERVICE CENTER IN THE WAILUKU MILLYARD. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND		387			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	HTH	387C			C
HTH210 - HOSPITAL CARE - HAWAII HEALTH SYSTEMS CORP							
4.		HAWAII HEALTH SYSTEMS CORPORATION, FACILITY IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENEWAL AND RENOVATION OF HAWAII HEALTH SYSTEMS CORPORATION'S FACILITIES.					
		PLANS		1		1	
		DESIGN		1		1	
		CONSTRUCTION		14,997		14,997	
		EQUIPMENT		1		1	
		TOTAL FUNDING	HTH	15,000E		15,000E	
5.		MAUI MEMORIAL HOSPITAL, TRANSFORMER PAD AND ELECTRICAL EQUIPMENT, MAUI					
		DESIGN AND CONSTRUCTION TO INSTALL TRANSFORMER PAD AND ELECTRICAL EQUIPMENT TO TIE MAUI MEMORIAL MEDICAL CENTER'S ELECTRICAL POWER INTO THE ALTERNATIVE MAIN FEEDER SERVICE LINE SUPPLIED BY THE MAUI ELECTRIC COMPANY POWER PLANT TO PROVIDE A BACKUP ELECTRICAL POWER SYSTEM.					
		DESIGN		30			
		CONSTRUCTION		290			
		EQUIPMENT		28			
		TOTAL FUNDING	HTH	348C			C
6.		MAUI MEMORIAL HOSPITAL, ELECTRICAL UPGRADE, MAUI					
		DESIGN AND CONSTRUCTION TO REPLACE ELECTRICAL PANELS THROUGHOUT THE FACILITY TO MEET CURRENT ELECTRICAL CODE AND LIFE SAFETY CODE.					
		DESIGN		26			
		CONSTRUCTION		390			
		EQUIPMENT		10			
		TOTAL FUNDING	HTH	426C			C
7.		MAUI MEMORIAL HOSPITAL, UPGRADE OF FIRE ALARM SYSTEM, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF A NEW FIRE ALARM SYSTEM AND APPURTENANCES, TO COMPLY WITH CURRENT CODE REQUIREMENTS.					
		DESIGN		50			
		CONSTRUCTION		550			
		EQUIPMENT		10			
		TOTAL FUNDING	HTH	610C			C
HTH430 - ADULT MENTAL HEALTH - INPATIENT							
8.	430903	HAWAII STATE HOSPITAL, WATER WELL IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN AND CONSTRUCTION TO UPGRADE THE WATER WELL AND THE AREA ADJACENT TO THE WELL.					
		DESIGN		39			
		CONSTRUCTION		218			
		TOTAL FUNDING	AGS	257C			C
HTH760 - HEALTH STATUS MONITORING							
9.	760901	KINAU HALE, INSTALL FIREPROOF VAULT FOR THE VITAL RECORDS OFFICE, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIREPROOF VAULT TO STORE IRREPLACEABLE BIRTH CERTIFICATE, MARRIAGE, DIVORCE, DEATH, AND ADOPTION RECORDS FOR THE VITAL RECORDS OFFICE.					
		DESIGN		20			
		CONSTRUCTION		100			
		TOTAL FUNDING	AGS	120C			C
HTH907 - GENERAL ADMINISTRATION							
10.	907501	CORRECTIONS ACCOMMODATING THE PHYSICALLY CHALLENGED IN DOH FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MODIFICATION FOR THE PHYSICALLY CHALLENGED TO CORRECT EXISTING ARCHITECTURAL BARRIERS AT DEPARTMENT OF HEALTH FACILITIES.					
		DESIGN		80			
		CONSTRUCTION		1,000			
		TOTAL FUNDING	AGS	1,080C			C
11.		WAIMANALO HEALTH CENTER, OAHU					
		CONSTRUCTION FOR CODE AND RELATED IMPROVEMENTS FOR THE WAIMANALO HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION		150			
		TOTAL FUNDING	HTH	150C			C
F. SOCIAL SERVICES							
DEF112 - SERVICES TO VETERANS							
1.		WAIPAHU CENTENNIAL MEMORIAL, OAHU					
		CONSTRUCTION OF A MEMORIAL INCORPORATING AN EXISTING MEMORIAL IN WAIPAHU, HONORING THOSE WHO GAVE THEIR LIVES DURING WWI, WWII, KOREAN WAR, VIETNAM WAR, AND DESERT STORM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION		200			
		TOTAL FUNDING	DEF	200C			C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
2.		HAWAII ISLAND VETERANS MEMORIAL INC. COMBINED VETERANS CENTER (CVC), HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW VETERANS CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS		80			
		LAND		80			
		DESIGN		230			
		CONSTRUCTION		2,515			
		EQUIPMENT		45			
		TOTAL FUNDING	DEF	2,950C			C
3.		OAHU VETERANS CENTER, AIEA BAY STATE RECREATION AREA, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DEMOLITION AND BEAUTIFICATION OF SITE DESIGNATED FOR THE VETERANS MEMORIAL AT AIEA BAY STATE RECREATION AREA. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		50			
		DESIGN		50			
		CONSTRUCTION		100			
		TOTAL FUNDING	AGS	200C			C
BED220 - RENTAL HOUSING SERVICES							
4.		VARIOUS STUDIES FOR IWILEI LANDS, OAHU					
		PLANS AND CONSTRUCTION FOR VARIOUS STUDIES OF THE IWILEI PROJECT. STUDIES TO INCLUDE: ENVIRONMENTAL ASSESSMENT, ARCHAEOLOGY, TRAFFIC, ENGINEERING, LAND COSTS, APPRAISAL, AND RFP DEVELOPMENT.					
		PLANS		180			
		CONSTRUCTION				300	
		TOTAL FUNDING	BED	180C		300C	
BED229 - HCDCH ADMINISTRATION							
5.	HCH004	HOUSING IMPROVEMENTS FOR FEDERAL LOW RENT PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR HOUSING IMPROVEMENTS INCLUDING BUT NOT LIMITED TO PHYSICAL, HEALTH, AND SAFETY IMPROVEMENTS AND COMPLIANCE WITH CURRENT CODES AND STANDARDS.					
		DESIGN		2,723		1,299	
		CONSTRUCTION		25,124		13,603	
		TOTAL FUNDING	BED	27,847N		14,902N	
HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS							
6.		HAWAIIAN HOME LANDS DEVELOPMENT, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF HAWAIIAN HOME LANDS FOR RESIDENTIAL, AGRICULTURAL, AND OTHER PURPOSES PERMITTED BY THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.					
		PLANS				2,500	
		LAND				2,500	
		DESIGN				2,500	
		CONSTRUCTION				17,500	
		TOTAL FUNDING	HHL		E	25,000	E
7.		WAIMANALO HAWAIIAN HOMES ASSOCIATION, OAHU					
		CONSTRUCTION FOR THE WAIMANALO HOMESTEAD ASSOCIATION COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION		300			
		TOTAL FUNDING	HHL	300	C		C
G. FORMAL EDUCATION							
EDN100 - SCHOOL-BASED BUDGETING							
1.	101	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES AND/OR TRAILER PORTABLES WHILE SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION/REPAIR; GROUND AND SITE WORK; EQUIPMENT AND APPURTENANCES.					
		DESIGN		150		150	
		CONSTRUCTION		2,700		2,700	
		EQUIPMENT		150		150	
		TOTAL FUNDING	AGS	3,000	B	3,000	B
2.	002	LUMP SUM CIP-MINOR RENOVATIONS TO BUILDINGS AND SCHOOL SITES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		150		150	
		CONSTRUCTION		1,090		1,600	
		EQUIPMENT		100		100	
		TOTAL FUNDING	AGS	1,340	B	1,850	B
3.	003	LUMP SUM CIP-MASTER PLANS, SITE STUDIES, AND MINOR LAND ACQUISITIONS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS, AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.					
		PLANS		495		495	
		LAND		5		5	
		TOTAL FUNDING	AGS	500B		500B	
4.	004	LUMP SUM CIP-RENOVATIONS FOR NOISE AND HEAT ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE, VENTILATION, AND/OR HIGH TEMPERATURE PROBLEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200		200	
		CONSTRUCTION		800		1,300	
		TOTAL FUNDING	AGS	1,000B		1,500B	
5.	005	LUMP SUM CIP-FIRE PROTECTION, CODE VIOLATIONS AND ALARM SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS TO MEET COUNTY FIRE PROTECTION STANDARDS AND/OR FIRE CODE VIOLATIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		300		300	
		CONSTRUCTION		1,200		1,700	
		TOTAL FUNDING	AGS	1,500B		2,000B	
6.	006	LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO PHYSICALLY CHALLENGED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		500		500	
		CONSTRUCTION		3,500		3,500	
		TOTAL FUNDING	AGS	4,000B		4,000B	
7.	007	LUMP SUM CIP-SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		40		40	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		CONSTRUCTION		200		200	
		EQUIPMENT		10		10	
		TOTAL FUNDING	AGS	250B		250B	
8.	008	LUMP SUM CIP-ASBESTOS AND/OR LEAD PAINT REMOVAL IN SCHOOL BUILDINGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT, AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS, STATEWIDE. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD PAINT.					
		DESIGN		100		100	
		CONSTRUCTION		650		900	
		TOTAL FUNDING	AGS	750B		1,000B	
9.	009	LUMP SUM CIP-REQUIREMENTS FOR HEALTH AND SAFETY/LAWS AND ORDINANCES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES AND/ OR COUNTY REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100		100	
		CONSTRUCTION		650		900	
		TOTAL FUNDING	AGS	750B		1,000B	
10.	010	LUMP SUM CIP-PROJECT ADJUSTMENT FUND, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DOE PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.					
		DESIGN		200		200	
		CONSTRUCTION		1,000		1,000	
		EQUIPMENT		50		50	
		TOTAL FUNDING	AGS	1,250B		1,250B	
11.	011	LUMP SUM CIP-TELECOMMUNICATIONS AND POWER INFRASTRUCTURE, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		325			
		CONSTRUCTION		4,000			
		EQUIPMENT		175			
		TOTAL FUNDING	AGS	4,500B			B
12.	014	LUMP SUM CIP-CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS		250		250	
		TOTAL FUNDING	EDN	250B		250B	
13.	060	LUMP SUM CIP-STATE/DISTRICT RELOCATING AND IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		15			
		CONSTRUCTION		59			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	75B			B
14.	014050	LUMP SUM CIP-ELECTRICAL UPGRADES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES AT SCHOOLS, STATEWIDE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		125			
		CONSTRUCTION		2,875			
		TOTAL FUNDING	AGS	3,000B			B
15.	252014	CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR UPGRADE OF ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		140			
		CONSTRUCTION				800	
		TOTAL FUNDING	AGS	140B		800B	
16.	404060	IAO INTERMEDIATE SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF THE ARMORY; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		6,900			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	7,000B			B
17.	279014	ILIMA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR UPGRADE OF ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		95			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		CONSTRUCTION					400
		TOTAL FUNDING	AGS		95B		400B
18.	821100	KAPOLEI HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT OF NEW HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		34,000			
		EQUIPMENT		1,000			
		TOTAL FUNDING	AGS	35,000B			B
19.	821300	KAPOLEI HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST AND/OR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		14,750			
		EQUIPMENT		250			
		TOTAL FUNDING	AGS	15,000B			B
20.	354200	KEAAU HIGH SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR SECOND AND THIRD INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		17,150			
		EQUIPMENT		350			
		TOTAL FUNDING	AGS	17,500B			B
21.	354300	KEAAU HIGH SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR THE THIRD INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		9,900		1,900	
		EQUIPMENT		100		100	
		TOTAL FUNDING	AGS	10,000B		2,000B	
22.	354400	KEAAU HIGH SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FOURTH INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		600			
		CONSTRUCTION				6,850	
		EQUIPMENT				150	
		TOTAL FUNDING	AGS	600B		7,000B	
23.	391A51	KEONEPOKO ELEMENTARY SCHOOL, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		CONSTRUCTION AND EQUIPMENT FOR AN ADMINISTRATION/LIBRARY FACILITY; COVERED WALKWAYS; RENOVATION OF TEMPORARY FACILITIES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				3,900	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS		B	4,000B	
24.	262451	NANAKULI ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT-CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				2,750	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS		B	2,850B	
25.	823100	NANAKULI IV ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST AND SECOND INCREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				20,000	
		EQUIPMENT				1,000	
		TOTAL FUNDING	AGS		B	21,000B	
26.	424651	WAIHEE ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				2,895	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS		B	2,945B	
27.	424131	WAIHEE ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A PLAYFIELD, WATER RETENTION BASIN, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		3,350			
		EQUIPMENT		150			
		TOTAL FUNDING	AGS	3,500B			B
28.		ALIIOLANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR NEW PLAYGROUND SURFACE AND EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		8			
		CONSTRUCTION		40			
		TOTAL FUNDING	AGS	48C			C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
29.		CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ATHLETIC FACILITY IMPROVEMENTS. PROJECT TO INCLUDE A VENTILATION SYSTEM FOR THE GYMNASIUM; EQUIPMENT AND APPURTENANCES.					
		DESIGN			40		
		CONSTRUCTION			380		
		TOTAL FUNDING	AGS		420C		C
30.		HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO PROVIDE DRAINAGE IMPROVEMENTS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			15		
		CONSTRUCTION			85		
		TOTAL FUNDING	AGS		100C		C
31.		HOKULANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF A PLAYGROUND SURFACE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			40		
		TOTAL FUNDING	AGS		45C		C
32.		HOLUALOA ELEMENTARY SCHOOL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF THE ADMINISTRATION BUILDING AND LIBRARY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			10		
		DESIGN			30		
		CONSTRUCTION			360		
		TOTAL FUNDING	AGS		400C		C
33.		JARRETT MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL ONE HUNDRED AND FIFTY STUDENT LOCKERS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			25		
		TOTAL FUNDING	AGS		30C		C
34.		JARRETT MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF METAL SECURITY GATES; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			65		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		TOTAL FUNDING	AGS		70C		C
35.		KAALA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES TO SUPPORT ADDITIONAL EQUIPMENT AND CLASSROOM LIGHTING NEEDS.					
		DESIGN			10		
		CONSTRUCTION			95		
		TOTAL FUNDING	AGS		105C		C
36.		KAHUKU HIGH SCHOOL, OAHU					
		LAND ACQUISITION TO IMPLEMENT THE KAHUKU SCHOOL MASTER PLAN TO MEET EDUCATIONAL STANDARDS FOR INTERMEDIATE/SECONDARY SCHOOLS.					
		LAND			1,000		
		TOTAL FUNDING	AGS		1,000C		C
37.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RECONFIGURATION OF AIR CONDITIONING SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		CONSTRUCTION			850		
		TOTAL FUNDING	AGS		1,000C		C
38.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A PAVED PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			190		
		TOTAL FUNDING	AGS		215C		C
39.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING G; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		
		CONSTRUCTION			450		
		EQUIPMENT			50		
		TOTAL FUNDING	AGS		600C		C
40.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			80		
		CONSTRUCTION			370		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	AGS	450C			C
41.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE THE MUSIC BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		38			
		CONSTRUCTION		188			
		TOTAL FUNDING	AGS	226C			C
42.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN FOR A STUDENT LANAI. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		50			
		TOTAL FUNDING	AGS	50C			C
43.		KAULUWELA ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		175			
		TOTAL FUNDING	AGS	175C			C
44.		KONAWAENA MIDDLE SCHOOL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATION OF CURRENT KONAWAENA ELEMENTARY BUILDINGS AND CLASSROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		80			
		DESIGN		100			
		CONSTRUCTION				2,000	
		TOTAL FUNDING	AGS	180C		2,000C	
45.		KONAWAENA MIDDLE SCHOOL, HAWAII					
		DESIGN FOR LOCKERS AND SHOWERS FOR KONAWAENA MIDDLE SCHOOL. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		483			
		TOTAL FUNDING	AGS	483C			C
46.		KUHIO ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR A SECOND FLOOR ANNEX TO THE ADMINISTRATION AND LIBRARY BUILDING. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		25			
		TOTAL FUNDING	AGS	25C			C
47.		LAUPAHOEHOE HIGH AND ELEMENTARY SCHOOL, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A BAND BUILDING. PROJECT TO INCLUDE: RESTROOMS; COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200			
		CONSTRUCTION		2,200			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	2,500C			C
48.		LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO CONVERT THE OLD LIBRARY BUILDING INTO A CULINARY ARTS FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		70			
		CONSTRUCTION		450			
		TOTAL FUNDING	AGS	520C			C
49.		LINCOLN ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A SECURITY SYSTEM FOR CLASSROOMS. PROJECT MAY INCLUDE MICROWAVE/INFRARED AND PARTIAL PERIMETER DETECTION BY MAGNETIC DOOR SWITCHES ON EXTERIOR DOORS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				11	
		CONSTRUCTION				34	
		TOTAL FUNDING	AGS		C		45C
50.		LUNALILO ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING OF SECOND FLOOR COMPUTER ROOM; EQUIPMENT AND APPURTENANCES.					
		DESIGN		5			
		CONSTRUCTION		40			
		EQUIPMENT		5			
		TOTAL FUNDING	AGS	50C			C
51.		MAEMAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A DRAINAGE SYSTEM FOR MAEMAE ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		150			
		CONSTRUCTION		450			
		TOTAL FUNDING	AGS	600C			C
52.		MANOA ELEMENTARY SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN FOR THE FIRE ACCESS ROAD THAT COMPLIES WITH CODE AND ADDITIONAL PARKING ON THE MAKAI SIDE OF THE ROAD. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		TOTAL FUNDING	AGS		25C		C
53.		MOANALUA HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN EDUCATIONAL TECHNOLOGY CENTER IN THE MULTI-PURPOSE STUDENT CENTER. PROJECT TO INCLUDE EQUIPMENT AND APPURTENANCES.					
		DESIGN			37		
		CONSTRUCTION			338		
		TOTAL FUNDING	AGS		375C		C
54.		MOUNTAIN VIEW ELEMENTARY SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR COVERED WALKWAYS FOR PORTABLES; GROUND AND IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			20		
		CONSTRUCTION			110		
		TOTAL FUNDING	AGS		130C		C
55.		MOUNTAIN VIEW ELEMENTARY SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION TO CONVERT THE OLD CAFETERIA TO THREE CLASSROOMS, AND FOR BUS-DROP OFF AND PARKING LOT IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			60		
		CONSTRUCTION			840		
		TOTAL FUNDING	AGS		900C		C
56.		NUUANU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR LANDSCAPING IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			45		
		TOTAL FUNDING	AGS		50C		C
57.		PAUOA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RESURFACE THE PARKING LOT AT PAUOA ELEMENTARY SCHOOL. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			8		
		CONSTRUCTION			67		
		TOTAL FUNDING	AGS		75C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
58.		PEARL CITY HIGHLANDS, OAHU					
		DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY CONNECTING THE LIBRARY TO THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			60		
		TOTAL FUNDING	AGS		65C		C
59.		RADFORD HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF RESTROOM FACILITIES AND RELATED SYSTEMS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			10		
		CONSTRUCTION			740		
		TOTAL FUNDING	AGS		750C		C
60.		ROOSEVELT HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR GYMNASIUM EXPANSION. PROJECT TO INCLUDE PARKING STRUCTURE AND WEIGHT ROOM. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			50		
		DESIGN			50		
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		300C		C
61.		ROYAL ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR WATER DRAINAGE IMPROVEMENTS BETWEEN BUILDING B AND C. PROJECT TO INCLUDE DRAIN INLETS, UNDERGROUND PIPING, AND HEADWALL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			45		
		TOTAL FUNDING	AGS		50C		C
62.		ROYAL ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PLAYGROUND SURFACING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			30		
		TOTAL FUNDING	AGS		35C		C
63.		STEVENSON MIDDLE SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF SECURITY SCREENS; INSTALLATION OF RAILS TO SPECIFICATIONS; AND INSTALLATION OF SECOND FLOOR SECURITY GATES. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		26			
		CONSTRUCTION		174			
		TOTAL FUNDING	AGS	200C			C
64.		WAIALAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF CAMPUS COVERED WALKWAYS FROM BUILDING A AND B AND C TO BUILDING D (CAFETERIA) APPROXIMATELY 75' LONG AND 8' WIDE. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		10			
		CONSTRUCTION		100			
		TOTAL FUNDING	AGS	110C			C
65.		WAIANAE HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW MEDIA BUILDING. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100			
		CONSTRUCTION		1,000			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	1,200C			C
66.		WAIALUA INTERMEDIATE AND HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR DUGOUTS, FENCING, AND FOUL LINE IN-FIELD FENCING FOR BASEBALL FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		22			
		CONSTRUCTION		168			
		TOTAL FUNDING	AGS	190C			C
67.		WAIMALU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADING OF THE SCHOOL ELECTRICAL SYSTEM TO MEET BUILDING CODES, FIRE CODES, AND TECHNOLOGICAL PROGRAM NEEDS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		30			
		CONSTRUCTION		170			
		TOTAL FUNDING	AGS	200C			C
68.		WAIMANALO INTERMEDIATE SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		CONSTRUCTION FOR THE RESURFACING OF AN OUTDOOR BASKETBALL COURT. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		50			
		TOTAL FUNDING	AGS	50C			C
EDN407 - PUBLIC LIBRARIES							
69.	01-H&S	HEALTH AND SAFETY REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH AND SAFETY PROJECTS AT PUBLIC LIBRARY FACILITIES. PROJECT INCLUDES, BUT IS NOT LIMITED TO, ASBESTOS ABATEMENT, FIRE PROTECTION, REMOVAL OF ARCHITECTURAL BARRIERS, IMPROVEMENTS TO BUILDINGS AND GROUNDS, PROVISIONS FOR ENVIRONMENTAL CONTROLS, AND THE REPLACEMENT OF HAZARDOUS FACILITIES.						
		PLANS		125			
		DESIGN		275			
		CONSTRUCTION		1,000			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	1,500C			C
70.		KAILUA PUBLIC LIBRARY, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF KAILUA PUBLIC LIBRARY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN		10			
		CONSTRUCTION		110			
		TOTAL FUNDING	AGS	120C			C
71.		HANAPEPE PUBLIC LIBRARY, KAUAI					
		PLANS AND DESIGN FOR EXPANSION AND ARCHITECTURAL BARRIER REMOVAL.					
		PLANS		50			
		DESIGN		150			
		TOTAL FUNDING	AGS	200C			C
UOH100 - UNIVERSITY OF HAWAII, MANOA							
72.	M86	UHM, FOOD SERVICE FACILITIES, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO FOOD SERVICES FACILITIES.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		497			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	500B			B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
73.	M88	UHM, PARKING STRUCTURES, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PARKING STRUCTURES AND PARKING IMPROVEMENTS ON THE MANOA CAMPUS.					
		PLANS		1			
		DESIGN		656			
		CONSTRUCTION		6,092			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	6,750E			E
74.	041	UHM, HAWAII HALL RENOVATION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF HAWAII HALL. PROJECT TO INCLUDE SITE IMPROVEMENTS, EQUIPMENT, AND OTHER RELATED WORK.					
		DESIGN		1			
		CONSTRUCTION		1			
		EQUIPMENT		1,806			
		TOTAL FUNDING	AGS	1,808C			C
75.	183	UHM, YIAN CHINESE TEA HOUSE, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CHINESE TEA HOUSE.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		727			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	730R			R
76.	292	UHM, FREAR HALL RENOVATION, OAHU					
		PLANS FOR A PROJECT DEVELOPMENT REPORT FOR THE RENOVATION OF FREAR HALL.					
		PLANS		150			
		TOTAL FUNDING	UOH	150W			W
77.	161	UHM, INSTITUTE OF REPRODUCTIVE BIOLOGY, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS FOR THE INSTITUTE OF REPRODUCTIVE BIOLOGY. PROJECT MAY INCLUDE AN ADDITION TO AND/OR RENOVATION OF THE BIOMEDICAL SCIENCES BUILDING. PROJECT TO INCLUDE SITEWORK, INFRASTRUCTURE, BUILDING IMPROVEMENTS, RENOVATION, EQUIPMENT, AND OTHER RELATED WORK.					
		PLANS		1			
		DESIGN		100			
		CONSTRUCTION		4,699			
		EQUIPMENT		100			
		TOTAL FUNDING	UOH	4,900C			C
78.	295	UHM, SOCCER AND FOOTBALL FIELD IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE EXISTING GRASS SOCCER AND FOOTBALL PRACTICE FIELDS. PROJECT TO INCLUDE SITEWORK, INFRASTRUCTURE, WALKWAYS, FENCING, DRAINAGE IMPROVEMENTS, LANDSCAPING, STORAGE, AND OTHER RELATED WORK.					
		PLANS		1			
		DESIGN		142			
		CONSTRUCTION		2,009			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	2,153C			C
79.	294	UHM, SOFTBALL BATTING CAGES, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SOFTBALL BATTING CAGES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		10			
		DESIGN		20			
		CONSTRUCTION		219			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	250C			C
80.		UHM, HALEAKALA LONG RANGE DEVELOPMENT PLAN, MAUI					
		PLANS FOR A LONG RANGE DEVELOPMENT PLAN FOR HALEAKALA.					
		PLANS		550			
		TOTAL FUNDING	UOH	550C			C
UOH210 - UNIVERSITY OF HAWAII, HILO							
81.	342	UHH, CLASSROOM/OFFICE BUILDING, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTRUCTIONAL FACILITIES AT THE UNIVERSITY OF HAWAII AT HILO.					
		DESIGN		200			
		CONSTRUCTION		1			
		EQUIPMENT		1,600			
		TOTAL FUNDING	AGS	1,801C			C
82.	440	UHH, UNIVERSITY PARK, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE UNIVERSITY OF HAWAII AT HILO'S UNIVERSITY PARK.					
		DESIGN		1			
		CONSTRUCTION		399			
		TOTAL FUNDING	AGS	400S			S
83.	449	UHH, UNIVERSITY PARK, PHASE III, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		PLANS, DESIGN, AND CONSTRUCTION FOR INFRASTRUCTURE AND OTHER IMPROVEMENTS ON THE MAUKA CAMPUS TO ACCOMMODATE DEVELOPMENT OF A MULTIPURPOSE SPORTS AND RECREATION CONFERENCE COMPLEX, ACADEMIC AND RESEARCH ACTIVITIES. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		1			
		DESIGN		249			
		CONSTRUCTION		2,500			
		TOTAL FUNDING	AGS	2,750C			C
84.	698	UHH, PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS FOR THE PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		25			
		DESIGN		325			
		CONSTRUCTION		1,950			
		TOTAL FUNDING	AGS	500C			C
			AGS	1,800N			N
85.	448	UHH, MULTIPURPOSE SPORTS AND RECREATION CONFERENCE COMPLEX, HAWAII					
		PLANS FOR A PROJECT DEVELOPMENT REPORT FOR THE MULTI-PURPOSE SPORTS, RECREATION, AND CONFERENCE COMPLEX.					
		PLANS		300			
		TOTAL FUNDING	UOH	300C			C
86.	413	UHH, STUDENT SERVICES BUILDING RENOVATION/ADDITION, HAWAII					
		PLANS FOR IMPROVEMENTS TO THE STUDENT SERVICES BUILDING. PROJECT MAY INCLUDE THE RENOVATION AND/OR ADDITION FOR STUDENT SERVICES PROGRAMS, CHANCELLOR'S OFFICE, UNIVERSITY RELATIONS, BUSINESS OFFICE, HUMAN RESOURCES, AND OTHER ADMINISTRATIVE UNITS.					
		PLANS		200			
		TOTAL FUNDING	UOH	200C			C
87.	412	UHH, SOFTBALL FIELD, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SOFTBALL FIELD. PROJECT TO INCLUDE BLEACHERS, RESTROOMS, LIGHTING, ACCESSIBLE ROUTE, AND OTHER NECESSARY IMPROVEMENTS.					
		PLANS		50			
		DESIGN		27			
		CONSTRUCTION		247			
		EQUIPMENT		1			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	AGS	325C			C
UOH800 - UH - COMMUNITY COLLEGES							
88.	M100	MAU, CAMPUS DEVELOPMENT, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES AT MAUI COMMUNITY COLLEGE INCLUDING SITE WORK, UTILITIES, BUILDINGS, AND RENOVATION OF EXISTING FACILITIES.					
		DESIGN		1			
		CONSTRUCTION		13,507			
		EQUIPMENT		1			700
		TOTAL FUNDING	AGS	13,509C			700C
89.	W100	WIN, CAMPUS DEVELOPMENT, OAHU					
		EQUIPMENT FOR NEW FACILITIES AT WINDWARD COMMUNITY COLLEGE. PROJECT TO INCLUDE SITEWORK, UTILITIES, AND RENOVATION OF EXISTING FACILITIES.					
		EQUIPMENT		2,192			
		TOTAL FUNDING	AGS	2,192C			C
90.	477	HAW, UNIVERSITY OF HAWAII CENTER AT WEST HAWAII, HAWAII					
		PLANS AND DESIGN FOR NEW FACILITIES FOR THE PERMANENT CAMPUS OF THE WEST HAWAII EDUCATION CENTER. PROJECT TO INCLUDE SITE WORK, INFRASTRUCTURE, UTILITIES, BUILDINGS, AND OTHER RELATED WORK.					
		PLANS		1			
		DESIGN		1,437			
		TOTAL FUNDING	AGS	1,438C			C
91.	L52	LEE, OBSERVATORY BUILDING, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW OBSERVATORY FACILITY AT LEEWARD COMMUNITY COLLEGE. PROJECT TO INCLUDE SITEWORK, UTILITIES, REBUILDING EXISTING TELESCOPE, BUILDING, AND OTHER RELATED WORK.					
		PLANS		10			
		DESIGN		80			
		CONSTRUCTION		620			
		EQUIPMENT		90			
		TOTAL FUNDING	AGS	800C			C
92.		HON, CAMPUS WATER DISTRIBUTION SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE CAMPUS WATER DISTRIBUTION SYSTEM AT HONOLULU COMMUNITY COLLEGE.					
		DESIGN		124			
		CONSTRUCTION		926			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	UOH	1,050C			C
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT							
93.	511	SYS, UNIVERSITY OF HAWAII BOOKSTORES, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO UNIVERSITY OF HAWAII BOOKSTORES, SYSTEMWIDE.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		497			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	500W			W
94.	531	SYS, MODIFICATIONS FOR ACCESSIBILITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS FOR ACCESSIBILITY IMPROVEMENTS. PROJECT TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT ALL UNIVERSITY CAMPUSES, EXTENSION SITES, AND OTHER RELATED FACILITIES.					
		DESIGN		100		100	
		CONSTRUCTION		5,000		1,899	
		EQUIPMENT		1		1	
		TOTAL FUNDING	AGS	5,101C		2,000C	
95.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS TO EXISTING FACILITIES AND/ OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.					
		DESIGN		565		92	
		CONSTRUCTION		4,170		1,081	
		EQUIPMENT		65			
		TOTAL FUNDING	AGS	4,800C		1,173C	
96.	537	SYS, FIRE SAFETY IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR FIRE SAFETY SYSTEMS. THE PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS, CENTRAL FIRE ALARM SYSTEMS, AND ALL OTHER FIRE SAFETY IMPROVEMENTS.					
		PLANS		1			
		DESIGN		540			
		CONSTRUCTION		3,503		500	
		TOTAL FUNDING	AGS	4,044C		500C	
97.	540	SYS, RENOVATION OF CLASSROOMS, LABS, AND OTHER RELATED SPACES, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MODERNIZATION AND IMPROVEMENT OF CLASSROOMS, LABORATORIES, OFFICES, AND OTHER RELATED SPACES TO PROVIDE SAFER, MORE CONDUCIVE TEACHING AND LEARNING ENVIRONMENTS FOR STUDENTS, FACULTY, AND STAFF.					
		DESIGN		979		208	
		CONSTRUCTION		2,475		4,785	
		EQUIPMENT		39		358	
		TOTAL FUNDING	UOH	3,493C		5,351C	
98.	541	SYS, FACILITIES IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENEWAL AND RENOVATION OF THE UNIVERSITY'S PHYSICAL PLANT. PROJECT TO INCLUDE REROOFING, MECHANICAL, ELECTRICAL SYSTEMS, AND OTHER REPAIRS, AND ASSOCIATED PROJECT COSTS.					
		DESIGN		900			
		CONSTRUCTION		9,400			
		EQUIPMENT		100			
		TOTAL FUNDING	UOH	10,400C			C
H. CULTURE AND RECREATION							
AGS881 - PERFORMING & VISUAL ARTS EVENTS							
1.	I117	STATE ART GALLERY, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A STATE ART GALLERY WITH SUPPORT AREA FOR THE STATE FOUNDATION ON CULTURE AND THE ARTS.					
		PLANS		150			
		DESIGN				50	
		CONSTRUCTION				1,450	
		TOTAL FUNDING	AGS	150B		1,500B	
2.	I119	WORKS OF ART MASTER PLANNING, STATEWIDE					
		PLANS AND DESIGN FOR THE INTEGRATION OF THE STATE FOUNDATION ON CULTURE AND THE ARTS (SFCA) WORKS OF ART PROGRAM INTO THE ARCHITECTURAL DESIGN OF PROPOSED EDUCATIONAL AND GOVERNMENT FACILITIES.					
		PLANS		100		100	
		DESIGN		100		100	
		TOTAL FUNDING	AGS	200B		200B	
3.		MAUI ACADEMY OF PERFORMING ARTS, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF WAILUKU'S FORMER NATIONAL DOLLAR STORE TO HOUSE THE MAUI ACADEMY OF PERFORMING ARTS ADMINISTRATIVE AND PERFORMING ARTS CENTER. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN		60			
		CONSTRUCTION		440			
		TOTAL FUNDING	AGS	500C			C
LNR804 - FOREST RECREATION							
4.	D72	COMPOSTING TOILETS, KAUAI					
		PLANS AND CONSTRUCTION FOR COMPOSTING TOILETS IN CAMPGROUNDS IN THE NA PALI AND PUU KA PELE FOREST RESERVES, KAUAI.					
		PLANS		10			
		CONSTRUCTION		140			
		TOTAL FUNDING	LNR	150C			C
LNR806 - PARK DEVELOPMENT AND OPERATION							
5.	F37	DIAMOND HEAD STATE MONUMENT, OAHU					
		LAND ACQUISITION FOR THE INCREMENTAL DEVELOPMENT OF DIAMOND HEAD STATE MONUMENT TO INCLUDE ACQUISITION OF IMPROVEMENTS AT CANNON CLUB. (SPECIAL FUNDS FROM THE SPECIAL LAND AND DEVELOPMENT FUND).					
		LAND		1,000			
		TOTAL FUNDING	LNR	1,000B			B
6.		H09 LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS TO PARK GROUNDS AND FACILITIES FOR HEALTH, SAFETY, AND ACCESSIBILITY FOR THE PHYSICALLY CHALLENGED.					
		DESIGN		250		250	
		CONSTRUCTION		1,000		1,000	
		TOTAL FUNDING	LNR	1,250C		1,250C	
7.		HAWAII NATURE CENTER, OAHU					
		CONSTRUCTION FOR A NEW HAWAII NATURE CENTER FACILITY IN MAKIKI. PROJECT TO INCLUDE DEMOLITION OF EXISTING STRUCTURES, CONSTRUCTION, SITE WORK, AND LANDSCAPING. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION		750			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	LNR		750C		C
8.		MOOKINI HEIAU COMPLEX, OAHU					
		DESIGN AND CONSTRUCTION FOR THE MOOKINI EDUCATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			40		
		CONSTRUCTION			360		
		TOTAL FUNDING	LNR		400C		C
9.		WAAHILA STATE PARK, OAHU					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF PARK ROADWAY; PARKING LOT; DRAINAGE SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			75		
		CONSTRUCTION			300		
		TOTAL FUNDING	LNR		375C		C
LNR801 - OCEAN-BASED RECREATION							
10.	271C	ALA WAI BOAT HARBOR FIRE PROTECTION SYSTEM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A FIRE PROTECTION SYSTEM.					
		PLANS			10		
		DESIGN			10		
		CONSTRUCTION					100
		TOTAL FUNDING	LNR		20D		100D
11.	299A	PLANNING FOR BOAT HARBOR FACILITIES, STATEWIDE					
		PLANS FOR CONTINUED STUDIES, RESEARCH, AND ADVANCE PLANNING OF BOAT HARBOR FACILITIES ON ALL ISLANDS.					
		PLANS			125		125
		TOTAL FUNDING	LNR		125D		125D
12.	299B	IMPROVEMENTS TO BOAT HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS EXISTING BOAT HARBOR FACILITIES THROUGHOUT THE STATE INCLUDING DREDGING, PAVING, UTILITIES, AND OTHER BERTHING AND SHORE FACILITIES INCLUDING ADMINISTRATIVE OFFICES, AND BOAT RAMPS.					
		PLANS			30		30
		DESIGN			30		30
		CONSTRUCTION			240		240
		TOTAL FUNDING	LNR		300D		300D
13.		KIKIAOLA LIGHT DRAFT HARBOR					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO KIKIAOLA BOAT HARBOR NEEDED TO ACCOMMODATE PASSENGER CRUISE LINE ANCHORAGE TENDERING OPERATIONS, INCREASED COMMERCIAL OPERATIONS, AND TO PROVIDE BERTHING FACILITIES TO BOATERS.					
		PLANS		450		200	
		DESIGN		450		200	
		CONSTRUCTION		5,400		2,300	
		TOTAL FUNDING	LNR	1,700C		2,700C	
			LNR	4,600N		N	
14.		KAILUA-KONA PIER REPAIR/RENOVATION, OAHU					
		DESIGN FOR THE REPAIR AND/OR RENOVATION OF THE KAILUA-KONA PIER. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		800			
		TOTAL FUNDING	LNR	800C			C
AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM							
15.		SA9901 EMERGENCY GENERATOR AND DISTRIBUTION CABLES, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF EXISTING STANDBY GENERATOR, TRANSFER SWITCH AND ASSOCIATED EQUIPMENT; REPLACEMENT OF EXISTING FUEL TANK; MODIFICATION OF EXISTING GENERATOR ROOM; REPLACEMENT OF EXISTING EMERGENCY SWITCHBOARD; AND REPLACEMENT OF EXISTING UNDERGROUND FEEDERS.					
		DESIGN		85			
		CONSTRUCTION				815	
		TOTAL FUNDING	AGS	85B		815B	
LNR807 - PARK INTERPRETATION							
16.	F02B	INTERPRETIVE PROGRAM DEVELOPMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR A SERIES OF INTERPRETIVE SIGNS AND SIGN KIOSKS IN SELECTED STATE PARKS.					
		DESIGN		10		10	
		CONSTRUCTION		50		50	
		TOTAL FUNDING	LNR	60B		60B	
17.	F138	LAPAKAHI STATE HISTORICAL PARK, HAWAII					
		CONSTRUCTION FOR AN INTERPRETIVE TRAIL.					
		CONSTRUCTION		250			
		TOTAL FUNDING	LNR	250B			B
18.	F23B	PUU O MAHUKA HEIAU STATE MONUMENT, OAHU					
		CONSTRUCTION FOR RESTORATION OF HEIAU AND ENTRYWAY IMPROVEMENTS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		CONSTRUCTION					100
		TOTAL FUNDING	LNR		B		100B
19.	854B	WAILUA RIVER STATE PARK, KAUAI					
		DESIGN AND CONSTRUCTION FOR INTERPRETIVE DEVICES, LANDSCAPING, AND RESTORATION OF MALAE HEIAU.					
		DESIGN		10			
		CONSTRUCTION		100			
		TOTAL FUNDING	LNR	110B			B
20.	F57B	KAHANA VALLEY STATE PARK, OAHU					
		DESIGN AND CONSTRUCTION FOR RESTORATION OF HUILUA FISHPOND, AND RESTORATION OF CHAPEL AND KAM MON STORE AS INTERPRETIVE CENTERS.					
		DESIGN		10			
		CONSTRUCTION		100			200
		TOTAL FUNDING	LNR	110B			200B
21.	H188	KEOLONAHIHI STATE HISTORICAL PARK, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR DEVELOPMENT OF INTERPRETIVE FACILITIES AND PHASE I IMPROVEMENTS.					
		PLANS		10			
		DESIGN		40			
		CONSTRUCTION					200
		TOTAL FUNDING	LNR	50B			200B
22.	H87B	KEKAHA KAI STATE PARK, HAWAII					
		DESIGN AND CONSTRUCTION TO DEVELOP AN EDUCATIONAL CENTER, OTHER INTERPRETIVE FACILITIES AND INTERPRETIVE PROGRAM MATERIALS FOR THE MAHAIULA BAY SECTION OF THE PARK. RESTORATION OF KAELEMAKULE HOUSE FOR HAWAIIAN CULTURAL CENTERS.					
		DESIGN		20			
		CONSTRUCTION					200
		TOTAL FUNDING	LNR	20B			200B
23.		CAPE KUMUKAHI STATE PARK, HAWAII					
		PLANS AND DESIGN OF RESTROOMS AND PARK FACILITIES. PROJECT MAY PROVIDE OCEAN ACCESS FOR FISHING, SNORKELING, RECREATION AREA, AND TOURIST STOP. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		1			
		DESIGN		249			
		TOTAL FUNDING	LNR	250C			C
24.		MCKENZIE STATE PARK, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR RESTROOMS AT MCKENZIE STATE PARK. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		58			
		TOTAL FUNDING	LNR	60C			C
		I. PUBLIC SAFETY					
		PSD402 - HALAWA CORRECTIONAL FACILITY					
1.	20001	HALAWA CORRECTIONAL FACILITY, INSTALL NEW FIRE SPRINKLER SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION FOR A NEW FIRE SPRINKLER SYSTEM AT THE HIGH SECURITY FACILITY.					
		DESIGN		52			
		CONSTRUCTION		675			
		TOTAL FUNDING	AGS	727C			C
		PSD403 - KULANI CORRECTIONAL FACILITY					
2.	20002	KULANI CORRECTIONAL FACILITY, NEW FIRE SPRINKLER AND HOT WATER SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION FOR NEW FIRE SPRINKLER SYSTEM AND HOT WATER HEATERS IN THE HOUSING DORMITORIES.					
		DESIGN		42			
		CONSTRUCTION		470			
		TOTAL FUNDING	AGS	512C			C
		PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER					
3.	20003	OAHU COMMUNITY CORRECTIONAL CENTER, FUEL SYSTEMS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO DIESEL/GASOLINE FUEL SYSTEMS TO MEET CURRENT EPA/DOH REQUIREMENTS.					
		DESIGN		25			
		CONSTRUCTION		286			
		TOTAL FUNDING	AGS	311C			C
		PSD900 - GENERAL ADMINISTRATION					
4.		ARCHITECTURAL BARRIER REMOVAL, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS FOR THE PHYSICALLY CHALLENGED TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT DEPARTMENT OF PUBLIC SAFETY FACILITIES.					
		DESIGN		25		25	
		CONSTRUCTION		274		274	
		EQUIPMENT		1		1	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	PSD	300C		300C	

DEF110 - AMELIORATION OF PHYSICAL DISASTERS

5. A37 MAUI ARMY NATIONAL GUARD ARMORY, MAUI

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MAJOR ARMORY COMPLEX CONSOLIDATING THE EXISTING FACILITIES, UTILITIES, ACCESS ROAD, PARKING, SECURITY FENCING, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		1,000		
CONSTRUCTION		14,400		
EQUIPMENT				500
TOTAL FUNDING	DEF	2,400C		500C
	DEF	13,000N		N

6. A44 RENOVATION OF BUILDING NO. 117, BARBERS POINT, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ARMY NATIONAL GUARD CONSOLIDATED FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION, UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, INTERIM RENOVATIONS, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		1,300		
CONSTRUCTION		11,700		500
EQUIPMENT				700
TOTAL FUNDING	DEF	100C		1,200C
	DEF	12,900N		N

7. A66 ARMY NATIONAL GUARD, RENOVATE BUILDING 282, BARBERS POINT, OAHU

DESIGN FOR THE RENOVATION OF EXISTING BUILDING #282 (BARBERS POINT) TO CONSOLIDATE THE 29TH INF BDE (E), 29TH SPT BN, THE C CO, 193D MED LIFT, AND THE CH47 HANGAR. PROJECT TO INCLUDE UTILITIES, ACCESS ROAD, PARKING, INTERIM RENOVATIONS, AND OTHER RELATED WORK.

DESIGN				100
TOTAL FUNDING	DEF		C	100C

8. A9701 REGIONAL TRAINING CENTER, BELLOWS AFS, OAHU

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SPECIALLY DESIGNED COMPLEX OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, FENCING, TRAINING FIELDS, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		1,200			
		CONSTRUCTION		15,200			
		EQUIPMENT		200			
		TOTAL FUNDING	DEF	1,500C			C
			DEF	15,100N			N
9.	C13	DISASTER WARNING AND COMMUNICATIONS DEVICES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT, AND UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT.					
		PLANS		1			
		LAND		1			
		DESIGN		50			
		CONSTRUCTION		410			
		EQUIPMENT		38			
		TOTAL FUNDING	AGS	500C			C
10.	C32	DIAMOND HEAD RADIO SITE CONSOLIDATION, DIAMOND HEAD MONUMENT SITE ACCESS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CIVIL DEFENSE RADIO SITE CONFIGURATION ON DIAMOND HEAD CRATER RIM TO ALLOW RADIO EQUIPMENT TO BE CONSOLIDATED INTO AREAS SEPARATE FROM AREAS OF PUBLIC ACCESS.					
		PLANS		1			
		LAND		1			
		DESIGN		125			10
		CONSTRUCTION					250
		EQUIPMENT					250
		TOTAL FUNDING	AGS	102C			410C
			AGS	25N			100N
11.	C33	INTERAGENCY (RAINBOW) MICROWAVE NETWORK MODERNIZATION IMPROVEMENTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT TO MODERNIZE AND AUGMENT THE EXISTING FEDERAL/STATE INTERAGENCY (RAINBOW) MICROWAVE NETWORK WITH DIGITAL LINKS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1			1
		LAND		1			1
		DESIGN		150			20

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		CONSTRUCTION				400	
		EQUIPMENT				400	
		TOTAL FUNDING	AGS		102C		412C
			AGS		50N		410N
K. GOVERNMENT-WIDE SUPPORT							
GOV100 - OFFICE OF THE GOVERNOR							
1.	G01	PROJECT ADJUSTMENT FUND, STATEWIDE					
		DESIGN FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISION OF THE APPROPRIATION ACT.					
		DESIGN			1		1
		TOTAL FUNDING	GOV		1C		1C
BED144 - STATEWIDE PLANNING AND COORDINATION							
2.		OCEANIC INSTITUTE, PROTOTYPE AQUATIC ANIMAL HATCHERY, OAHU					
		CONSTRUCTION FOR A PROTOTYPE AQUATIC ANIMAL HATCHERY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION			375		
		TOTAL FUNDING	BED		375C		C
BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY							
3.	KA007	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, MAUKA AREA INCREMENT 3, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR QUEEN STREET BETWEEN WARD AVENUE AND WAIMANU STREET. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY, DRAINAGE, SEWER, WATER, ELECTRICAL, TELEPHONE, AND CABLE TELEVISION SYSTEMS.					
		PLANS		1			
		LAND		4,214			
		DESIGN		5,003			
		CONSTRUCTION		16,782			
		TOTAL FUNDING	BED	9,600C			C
			BED	14,400N			N
			BED	2,000W			W
4.	HCD001	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PLANNING, DEVELOPMENT, AND PROJECT COSTS, AS DEFINED IN CHAPTER 206E, HAWAII REVISED STATUTES, FOR KAKAAKO COMMUNITY DEVELOPMENT DISTRICT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.					
		PLANS		1,403		1,418	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION			1		1
		TOTAL FUNDING	BED		1,406C		1,421C
BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING							
5.	00-01	HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE					
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUNDS TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.					
		CONSTRUCTION		15,000		15,000	
		TOTAL FUNDING	BUF	15,000C		15,000C	
6.	00-02	STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE					
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.					
		CONSTRUCTION		90,000		71,216	
		TOTAL FUNDING	BUF	90,000C		71,216C	
7.		BISHOP MUSEUM, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE BISHOP MUSEUM'S COLLECTIONS AND EXHIBITS FACILITIES REPAIR AND MAINTENANCE CAPITAL IMPROVEMENT PROJECT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION		436			
		EQUIPMENT		20			
		TOTAL FUNDING	BUF	456C			C
LNR101 - PUBLIC LANDS MANAGEMENT							
8.	E92	MOANALUA STREAM DREDGING, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR DREDGING OF MOANALUA STREAM NEAR KAMEHAMEHA HIGHWAY AND RELATED WORK.					
		PLANS		100			
		DESIGN		100			
		CONSTRUCTION				500	
		TOTAL FUNDING	LNR	200B		500B	
9.	E93	KALIHI STREAM DREDGING, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR DREDGING OF KALIHI STREAM.					
		PLANS		75			
		DESIGN		75			
		CONSTRUCTION				400	
		TOTAL FUNDING	LNR	150B		400B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
10.	E94	STREAM OWNERSHIP STUDY, STATEWIDE					
		PLANS FOR THE PREPARATION OF A STUDY TO DETERMINE STATE-OWNERSHIP OF STREAMS STATEWIDE.					
		PLANS		1,000			
		TOTAL FUNDING	LNR	1,000B			B
11.		PROTECTION OF AGRICULTURAL RESOURCES, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PROTECTION, MAINTENANCE, AND IMPROVEMENT OF VARIOUS AGRICULTURAL RESOURCE INFRASTRUCTURE ON MAUI.					
		PLANS		1			
		LAND		1			
		DESIGN		1			
		CONSTRUCTION		2,996			
		EQUIPMENT		1			
		TOTAL FUNDING	LNR	3,000C			C
AGS221 - CONSTRUCTION							
12.	B27	ADVANCE PLANNING, STATEWIDE					
		PLANS FOR PROVIDING ASSISTANCE TO THE PUBLIC, STATE, AND COUNTIES IN MATTERS RELATING TO DAGS' PUBLIC WORKS DIVISION AND INCLUDES THE PREPARATION OF PROGRAMS, REPORTS, STUDIES, AND INVENTORIES TO CARRY OUT DAGS' FUNCTIONS.					
		PLANS		120			50
		TOTAL FUNDING	AGS	120C			50C
13.	B28	STATE OFFICE BUILDING, REMODELING, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN STATE OWNED SPACE, TO PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. PROJECT TO INCLUDE REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION OF INEFFICIENT: OFFICE LAYOUTS, ENERGY CONSERVATION, LIGHTING, VENTILATION, PLUMBING, ELECTRICAL, AND DATA SYSTEMS.					
		DESIGN		120			
		CONSTRUCTION		691			
		TOTAL FUNDING	AGS	811C			C
14.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS		6,268		6,268	
		LAND		1		1	
		DESIGN		1		1	
		CONSTRUCTION		1		1	
		EQUIPMENT		1		1	
		TOTAL FUNDING	AGS	6,272C		6,272C	
15.	F109	AIR CONDITIONING SYSTEMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF AIR CONDITIONING SYSTEMS IN STATE BUILDINGS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		200			
		CONSTRUCTION		1,280			
		EQUIPMENT		5			
		TOTAL FUNDING	AGS	1,485C			C
16.	G107	STATE SPORTS RECREATIONAL COMPLEX, OAHU					
		EQUIPMENT FOR FURNITURE FOR THE KAPOLEI SPORTS RECREATIONAL COMPLEX.					
		EQUIPMENT		200			
		TOTAL FUNDING	AGS	200C			C
17.	H101	STATE OFFICE BUILDING, ADA PUBLIC ACCESSIBILITY, STATEWIDE					
		DESIGN AND CONSTRUCTION TO PROVIDE MINIMUM PUBLIC ACCESSIBLE PARKING AND PATHWAY TO ALL PROGRAMS IN DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES' STATE OFFICE BUILDINGS SERVING THE PUBLIC (INCLUDING FIRST FLOOR ACCESSIBLE RESTROOM).					
		DESIGN		30			
		CONSTRUCTION		2,300			
		TOTAL FUNDING	AGS	2,330C			C
18.	B101M	HEALTH AND SAFETY REQUIREMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MITIGATION OF HAZARDOUS MATERIALS AND/OR PHYSICAL CONDITIONS FROM STATE FACILITIES TO MEET CURRENT CODE REQUIREMENTS, STATEWIDE.					
		DESIGN		127		48	
		CONSTRUCTION		1,688		622	
		EQUIPMENT		5		5	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		TOTAL FUNDING	AGS	1,820C		675C	
19.	C10409	STATE CAPITOL DIST. ASBESTOS MITIGATION, AIR COND., AND OTHER IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR SETTLEMENT OF CONTRACTOR CLAIMS FOR DELAY IN COMPLETION OF PROJECT.					
		CONSTRUCTION		550			
		TOTAL FUNDING	AGS	550C			C
20.		KAPOLEI STADIUM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF PRACTICE FIELD LIGHTS ON TWO PRACTICE FIELDS FOR KAPOLEI STADIUM. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		1,402			
		TOTAL FUNDING	AGS	1,404C			C
21.		LIHUE MULTI-AGENCY MAINTENANCE AND SERVICE FACILITIES, KAUAI					
		CONSTRUCTION AND EQUIPMENT FOR THE PROVISION OF OFFICES, MAINTENANCE SHOPS, STORAGE, AND VEHICLE SERVICING AREAS FOR DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES KAUAI DISTRICT OFFICE.					
		CONSTRUCTION		464			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	465C			C
22.		MOILIILI COMMUNITY CENTER, OAHU					
		CONSTRUCTION FOR THE RENOVATION AND REPAIR OF THE ONLY ORIGINAL BUILDING REMAINING OF THE MOILIILI COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION		75			
		TOTAL FUNDING	LBR	75C			C
SUB201 - CITY AND COUNTY OF HONOLULU							
23.		MANOA COMMUNITY RECREATIONAL FACILITY, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR BUILDING DEMOLITION AND RELOCATION, ADDITIONAL PARKING, LANDSCAPING, BASKETBALL AND TENNIS COURTS, DRAINAGE, SITEWORK, AND A GYMNASIUM/MULTIPURPOSE COMMUNITY FACILITY.					
		PLANS		175			
		DESIGN		525			
		CONSTRUCTION				3,300	
		TOTAL FUNDING	CCH	700C		3,300C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	MOF	FISCAL YEAR 2000-01	MOF
24.		URBAN PARKS AND OPEN SPACE PROJECTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF PARKS AND OPEN SPACE PROJECTS TO IMPLEMENT RECOMMENDATIONS DEVELOPED BY AND COORDINATED AMONG THE COMMUNITIES OF ALA MOANA, MAKIKI, MCCULLY-MOILIILI, AND WAIKIKI.					
		PLANS		10			
		DESIGN		20			
		CONSTRUCTION		170			
		TOTAL FUNDING	CCH	200C			C
SUB301 - COUNTY OF HAWAII							
25.		PAHOA MAINSTREET ASSOCIATION, HAWAII					
		LAND ACQUISITION FOR THE PURCHASE OF A PARCEL IN THE CENTER OF PAHOA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND		150			
		TOTAL FUNDING	COH	150C			C
26.		PUAINAKO EXTENSION, HAWAII					
		DESIGN FOR THE PUAINAKO EXTENSION.					
		DESIGN		600			
		TOTAL FUNDING	COH	600C			C
27.		MOUNTAIN VIEW SENIOR CENTER BUILDING PURCHASE, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR PORTABLE BUILDINGS FOR THE MOUNTAIN VIEW SENIOR CENTER.					
		CONSTRUCTION		30			
		EQUIPMENT		170			
		TOTAL FUNDING	COH	200C			C
SUB401 - COUNTY OF MAUI							
28.		UPCOUNTRY MAUI WATERSHED PROJECT, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DEVELOPMENT OF A WATER STORAGE FACILITY FOR THE UPCOUNTRY MAUI WATERSHED PROJECT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		1			
		CONSTRUCTION		1,998			
		EQUIPMENT		1			
		TOTAL FUNDING	COM	2,000C			C
SUB501 - COUNTY OF KAUAI							
29.		WAIMEA SHAFT, WATER TREATMENT FACILITY, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
		LAND ACQUISITION AND DESIGN FOR DEVELOPMENT OF A WATER TREATMENT FACILITY AT THE WAIMEA SHAFT.					
		LAND		30			
		DESIGN		130			
		TOTAL FUNDING	COK	160C			C
30.		OMAO WELL, KAUAI					
		DESIGN AND CONSTRUCTION FOR AN EXPLORATORY WELL.					
		DESIGN		50			
		CONSTRUCTION		400			
		TOTAL FUNDING	COK	450C			C

PART V. CAPITAL IMPROVEMENT PROGRAM PROVISOS

SECTION 65. Provided that of the special funds appropriation for airports administration (TRN 195), the sum of $3,500,000 for fiscal biennium 1999-2001 shall be used for airports division capital improvements program staff costs, statewide; provided further that the airports division shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related position for the first five months of the fiscal year; and provided further that the airports division shall submit the budget report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 66. Provided that of the special funds appropriation for harbors administration (TRN 395), the sum of $1,500,000 for fiscal biennium 1999-2001 shall be used for harbors division capital improvements program staff costs, statewide; provided further that the harbors division shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related position for the first five months of the fiscal year; and provided further that the harbors division shall submit the budget report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 67. Provided that of the special funds, revenue bond funds and other federal funds appropriations for highways administration (TRN 595), the sum of $37,100,000 for fiscal biennium 1999-2001 shall be used for highways division capital improvements program staff costs, statewide; provided further that the highways division shall prepare a project-funded staff services budget report detail-

ing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related position for the first five months of the fiscal year; and provided further that the highways division shall submit the budget report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 68. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of $500,000 for fiscal biennium 1999-2001 shall be used for department of education capital improvements program staff costs, statewide; provided further that the department of education shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related position for the first five months of the fiscal year; and provided further that the department of education shall submit the budget report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 69. After the objectives of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto.

SECTION 70. In the event that currently authorized appropriations specified for capital investment purposes listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities improvement special fund, the governor may make supplemental allotments from the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV; provided that such supplemental allotments from the special funded project adjustment fund for state educational facilities shall not be used to increase the scope of the project, and may only be made to supplement currently authorized capital investment project cost elements.

SECTION 71. Provided that any amount appropriated for any capital improvement program project authorized in part II and listed in formal education, part G of part IV of this Act and funded from the state educational facilities improvement special fund and is excess of the amount required to complete the project, such excess funds may be expended with the approval of the governor for any or all of the following projects and purposes:

(1) Roosevelt High School, Oahu
Plans, design, and construction for the renovation of building A, phase I; ground and site improvements; equipment and appurtenances.

(2) Waipahu High School, Oahu
Design, construction, and equipment for an eight classroom building; ground and site improvements; equipment and appurtenances.

(3) Waianae High School, Oahu
Design, construction, and equipment for an eight classroom building; ground and site improvements; equipment and appurtenances.
(4) Leilehua High School, Oahu
Design, construction, and equipment for an eight classroom building; ground and site improvements; equipment and appurtenances.
(5) Kealakehe Intermediate School, Hawaii
Construction and equipment for administration/library and renovation of temporary facilities into classrooms; ground and site improvements; equipment and appurtenances.

SECTION 72. Provided that of the special fund appropriation for performing and visual arts events (AGS 881), the sum of $150,000 for fiscal year 1999-2000 shall be used for a study to evaluate alternative locations for the development of a state art gallery; provided further that this study shall consider locations within the capitol district, the Hawaii convention center, the university of Hawaii, the Honolulu academy of arts, and other private facilities; and provided further that the finding of the study shall be submitted to the legislature no later than twenty days prior to the convening of the 2000 regular sessions.

SECTION 73. Provided that of the general obligation bond fund appropriation for land and natural resources - natural physical environment (LNR 906), the sum of $3,120,000 for fiscal biennium 1999-2001 shall be used for the department of land and natural resources capital improvements program staff costs, statewide; provided further that the department of land and natural resources shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related position for the first five months of the fiscal year; and provided further that the department of land and natural resources shall submit the budget report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 74. Provided that of the general obligation bond fund appropriation for Hawaii community development authority project funded staff costs (BED 104), the sum of $2,827,000 for fiscal biennium 1999-2001 shall be used for Hawaii community development authority capital improvements program staff costs, statewide; provided further that the Hawaii community development authority shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related position for the first five months of the fiscal year; and provided further that the Hawaii community development authority shall submit the budget report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 75. Provided that of the general obligation bond fund appropriation for construction (AGS 221), the sum of $12,544,000 for fiscal biennium

2000-2001 shall be used for department of accounting and general services capital improvements program staff costs, statewide; provided further that the department of accounting and general services shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for all non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related position for the first five months of the fiscal year; and provided further that the department of accounting and general services shall submit the budget report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 76. Provided that of the general obligation bond fund appropriation for the city and county of Honolulu (SUB 201), the sum of $4,000,000 for fiscal biennium 1999-2001 shall be used for construction and equipment for the Manoa community recreational facility; and provided further that no funds shall be expended unless matched on a 1:2 (county:state) basis with funds from the city and county of Honolulu and/or other sources.

SECTION 77. Act 328, Session Laws of Hawaii 1997, section 140A, as amended by Act 116, Session Laws of Hawaii 1998, section 5, is amended to read as follows:

(1) By amending Item A-9A to read:

"9A. 980002 LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII

PLANS, DESIGN, LAND ACQUISITION, AND CONSTRUCTION IMPROVEMENTS AND EMERGENCY REPAIR AS REQUIRED FOR AN IRRIGATION PROJECT ENCOMPASSING FORMER SUGAR CANE FIELDS SERVED BY THE LOWER HAMAKUA DITCH. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS			10
LAND			10
DESIGN			90
CONSTRUCTION			[900] 890
TOTAL FUNDING	AGR	C	1,000C"

(2) By amending Item A-9C to read:

"9C. 990001 KULA VACUUM COOLING PLANT, MAUI

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS FOR THE VACUUM COOLING [CHAMBERS] FACILITIES AT KULA, MAUI.

DESIGN			[1] 10
CONSTRUCTION			[49] 40
TOTAL FUNDING	AGR	C	50C"

(3) By amending Item C-171B to read:

"171B. HIGHWAY 130 AND [137]132, TRAFFIC SIGNALS, HAWAII

DESIGN AND CONSTRUCTION FOR A TRAFFIC LIGHT AT THE INTERSECTION OF HIGHWAY 130 AND HIGHWAY [137]132.			
DESIGN			50
CONSTRUCTION			200
TOTAL FUNDING	TRN	E	250E"

(4) By amending Item G-74 to read:

"74. LAHAINALUNA HIGH SCHOOL, MAUI

DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW LIBRARY AND RENOVATION OF TEMPORARY FACILITY INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
DESIGN		174	
CONSTRUCTION			[3,057] 3,094
EQUIPMENT		100	
TOTAL FUNDING	AGS	274C	3,057C 37R"

(5) By amending Item G-86 to read:

"86. PEARL RIDGE ELEMENTARY SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF LIBRARY SPACE FOR A VIDEO STUDIO AND BROADCAST BOOTH ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
DESIGN		20	
CONSTRUCTION		155	
EQUIPMENT		100	
TOTAL FUNDING	AGS	275C	C"

(6) By amending Item G-97 to read:

"97. MANOA PUBLIC LIBRARY, OAHU

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR [A NEW] THE EXPANSION AND RENOVATION OF THE EXISTING LIBRARY FACILITY. [WITH TEMPERATURE, HUMIDITY, AND A COUSTICAL CONTROLS.]			
PLANS		50	
LAND		2	
DESIGN		600	
CONSTRUCTION			[5999] 3299
EQUIPMENT			1
TOTAL FUNDING	AGS	652C	[6000] 3300C"

(7) By amending Item K-1 to read:

"1. GO1 PROJECT ADJUSTMENT FUND, STATEWIDE

DESIGN FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.

DESIGN		1	1
TOTAL FUNDING	GOV [AGS]	1C	1C"

SECTION 78. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 5, in the amount indicated or balance thereof, is hereby amended to read as follows:

"Item No.	Amount (MOF)
C-37	$ 63,427 [D] E"

SECTION 79. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 316, Session Laws of Hawaii 1989, section 222, as amended by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, are hereby amended to read as follows:

"Item No.	Amount (MOF)
C-41	$ 3,620,258 [D] E
C-60	29,724 [C] E
C-60	179,375 [D] E"

SECTION 80. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 216, Session Laws of Hawaii 1987, section 280, as amended by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, are hereby amended to read as follows:

"Item No.	Amount (MOF)
C-43	$ 150,911 [D] E
C-47	1,422,737 [D] E
C-73	126,093 [D] E"

SECTION 81. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 300, Session Laws of Hawaii 1985, section 222, as amended by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof, are hereby amended to read as follows:

"Item No.	Amount (MOF)
C-32	$ 976,276 [D] E
C-33	513,186 [D] E
C-34	10,183 [D] E"

SECTION 82. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 301, Session Laws of Hawaii 1983, section 80, as amended by Act 285, Session Laws of Hawaii 1984, section 7, in the amount indicated or balance thereof, is hereby amended to read as follows:

"Item No.	Amount (MOF)
C-37	$ 1,002,526 [D] E"

SECTION 83. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 1, First Special Session Laws of Hawaii 1981, section 92, as amended by Act 264, Session Laws of Hawaii 1982, section 5, in the amount indicated or balance thereof, is hereby amended to read as follows:

"Item No.	Amount (MOF)
C-40	$ 57,039 [D] E"

SECTION 84. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

Item No.	Amount (MOF)
A-1	$ 100,000 C
A-6	800,000 C
C-6	5,000,000 B
C-7	650,000 B
C-11	120,000 B
C-17	56,000,000 B
C-19	10,465,000 B
C-22	37,000,000 B
C-29	670,000 B
C-32	1,262,000 B
C-37	120,000 B
C-74	300,000 B
C-80A	3,500,000 B
C-81	500,000 B
C-82	8,000,000 B
D-12	100,000 C
G-21	1,000,000 B
G-67	50,500 C
G-82	120,000 C
H-35C	900,000 B
H-41	185,000 C
K-10	1,938,097 C
K-13	969,152 C
K-21C	3,000,000 C
K-26	4,000 C
K-53	755,000 C
K-54	330,000 C
K-55	350,000 C
K-56	410,000 C
K-57	700,000 C

Item No.	Amount (MOF)
K-58	250,000 C
K-60	450,000 C"

SECTION 85. Any law to the contrary notwithstanding, the appropriation under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amount indicated or balance thereof, unallotted, allotted, encumbered and unrequired, is hereby lapsed:

Item No.	Amount (MOF)
A-6	$ 7,452 C
G-65	550,000 C"

SECTION 86. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 289, Session Laws of Hawaii 1993, section 127, as amended by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-6	$ 3,011,000 E
C-6	500,000 N
C-12	170,000 E
C-12	100,000 N"

SECTION 87. Any law to the contrary notwithstanding, the general obligation reimbursable bond fund appropriation under Act 7, Special Session of Hawaii 1993, section 23, in the amount of $324,994, or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed.

SECTION 88. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended by Act 300, Session Laws of Hawaii 1992, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
A-14	$ 804,000 C
A-18	140,600 C"

SECTION 89. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-90	$ 301,591 D
H-17	1 C"

SECTION 90. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 316, Session Laws of Hawaii 1989, section 222, as amended by Act

299, Session Laws of Hawaii 1990, section 6, and as amended by Act 287, Session Laws of Hawaii 1996, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-1	$ 341,830 E
C-2	561,026 E
C-4	110,440 E
C-7	691,332 E
C-9	386,754 E
C-12	3,124,512 E
C-13	707,668 E
C-20	104,798 E
C-21	122,760 E
C-23	45,397 E"

SECTION 91. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 316, Session Laws of Hawaii 1989, section 222, as amended by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-16	$ 622 B
C-17	7,669,497 E
C-17	1,000,000 N
C-19	8,800,000 E
C-41	1 D
C-51	110,170 D
C-53A	2,322 C
C-60	120 C
C-61	237,404 D
C-64	268,093 D
C-67	367 D
H-6	27 C"

SECTION 92. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 216, Session Laws of Hawaii 1987, section 280, as amended by Act 390, Session Laws of Hawaii 1988, section 6, and as amended by Act 287, Session Laws of Hawaii 1996, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-1	$ 215,629 E
C-2	102,603 B
C-2	682,252 E
C-3	21,665 E
C-10	178,245 B
C-10	522,966 E
C-14	201,417 E
C-14	19,798 B
C-19	960 B
C-19	2,461,312 E"

SECTION 93. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 216, Session Laws of Hawaii 1987, section 280, as amended by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
A-17A	$ 5,610 C
A-31	10,834 C
A-35	66,289 C
C-17	24,824 B
C-41	101,504 D
C-42	130,271 D
C-44	8,900 D
C-45	1,353 D
C-47	21,541 D
C-48	279 D
C-54	688 D
C-61	45,232 D
C-62	51 D
C-65	332,920 D
C-72	18,190 D
C-80	50,722 D
C-82A	3,667 D
C-84	1,582 D
C-89	45,283 D
H-40	5 C"

SECTION 94. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 300, Session Laws of Hawaii 1985, section 136, as amended by Act 345, Session Laws of Hawaii 1986, section 6, and as amended by Act 287, Session Laws of Hawaii 1996, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-1	$ 25,882 B
C-1	108,107 E
C-2	7,357 B
C-2	144,107 E
C-3	64,293 B
C-3	669 E
C-8	1,125 E
C-10	88,347 B
C-10	376,732 E
C-16	100,433 B
C-16	261,693 E"

SECTION 95. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 300, Session Laws of Hawaii 1985, section 136, as amended by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
A-10	$ 212,292 C
A-18D	83 C
C-13	220,110 E
C-14	26,178 B
C-31	24,861 D
C-33	24,166 D
C-40	1 D
C-43	50,719 D
C-44	96,128 D
C-54A	9,527 D
D-5	14,471 C
H-41	41,099 C
H-52	4,636 C
H-53	1 C"

SECTION 96. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 301, Session Laws of Hawaii 1983, section 80, as amended by Act 285, Session Laws of Hawaii 1984, section 7, and as amended by Act 287, Session Laws of Hawaii 1996, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-2	$ 54,128 B
C-2	39,797 E
C-3	872 B
C-3	529,415 E
C-4	62,551 E
C-6	91,704 B
C-12	14,943 B
C-12	458,608 E
C-15	65,000 B
C-15	245,144 E
C-18	132,747 E"

SECTION 97. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 301, Session Laws of Hawaii 1983, section 80, as amended by Act 285, Session Laws of Hawaii 1984, section 7, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
A-8A	$ 35,197 C
C-17	34,703 B
C-35	49,305 D
C-36	226,344 D
C-37	284 D
C-38	22,233 D
C-47A	47,902 D
H-18	100,034 C"

SECTION 98. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimburse-

ment under Act 1, First Special Session Laws of Hawaii 1981, section 92, as amended by Act 264, Session Laws of Hawaii 1982, section 5, and as amended by Act 287, Session Laws of Hawaii 1996, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-4	$ 5,368 E
C-5	1,098,928 B
C-13	26,997 E
C-17	11,511 E
C-17	638 B
C-19	14,921 E"

SECTION 99. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 1, First Special Session Laws of Hawaii 1981, section 92, as amended by Act 264, Session Laws of Hawaii 1982, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-3	$ 498 B
C-3A	143,895 E
C-16	512,303 E
C-46B	5,769 D
C-48	36,994 D
C-49A	5 D
C-50	140,259 D"

SECTION 100. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 214, Session Laws of Hawaii 1979, section 120, as amended by Act 300, Session Laws of Hawaii 1980, section 7, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

"Item No.	Amount (MOF)
C-20	$ 92,860 E"

SECTION 101. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 10, First Special Session Laws of Hawaii 1977, section 86, as amended by Act 243, Session Laws of Hawaii 1978, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-11	$ 49,951 E
C-14	15,914 B
C-14	303 E"

SECTION 102. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 195, Session Laws of Hawaii 1975, section 88, as amended by Act

226, Session Laws of Hawaii 1976, section 6, and as amended by Act 287, Session Laws of Hawaii 1996, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

"Item No.	Amount (MOF)
C-8	$ 20,282B
C-8	104,159E"

SECTION 103. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 195, Session Laws of Hawaii 1975, section 88, as amended by Act 226, Session Laws of Hawaii 1976, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

"Item No.	Amount (MOF)
C-7	$ 127,851 E
C-9	53,860 B
C-17	52,499 B"

SECTION 104. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 68, Session Laws of Hawaii 1971, section 4, as amended by Act 202, Session Laws of Hawaii 1972, section 4, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

"Item No.	Amount (MOF)
H-1	$ 33,766 B"

SECTION 105. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 40, Session Laws of Hawaii 1968, section 1, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

"Item No.	Amount (MOF)
C-8	$ 39,525 E"

PART VI. ISSUANCE OF BONDS

SECTION 106. **GOVERNOR'S DISCRETIONARY POWERS.** When it is deemed in the public interest of the State, the governor, in his discretion, is authorized to use general fund savings or balances determined to be available from authorized general fund program appropriations to finance capital improvement projects authorized in this Act or any other act currently authorized by the legislature, where the method of financing is designated to be the general obligation bond fund. Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

SECTION 107. **AIRPORT REVENUE BONDS.** The department of transportation is authorized to issue airport revenue bonds for airport capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond

funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such airport revenue bonds during the estimated period of construction of the capital improvements program project for which such airport revenue bonds are issued, to establish, maintain, or increase reserves for the airport revenue bonds and to pay the expenses of issuance of such bonds. The aforementioned airport revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such airport revenue bonds shall to the extent not paid from the proceeds of such bonds be paid from the airport revenue fund.

The governor, in his discretion, is authorized to use the airport revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by airport revenue bond funds.

SECTION 108. **HARBOR REVENUE BONDS.** The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued, to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, and pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

The governor, in his discretion, is authorized to use the harbor revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by harbor revenue bond funds.

SECTION 109. **HIGHWAY REVENUE BONDS.** The department of transportation is authorized to issue highway revenue bonds for highway capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such highway revenue bonds during the estimated period of construction of the capital improvement project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for such highway revenue bonds or highway revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such highway revenue bonds. The aforementioned highway revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such highway revenue bonds, to the extent not paid from the proceeds of such highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, and other user taxes, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the State highway fund.

The governor, in his discretion, is authorized to use moneys in the State highway fund to finance those highway capital improvement projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by revenue bond funds.

SECTION 110. **SMALL BOAT HARBOR REVENUE BONDS.** The department of land and natural resources is authorized to issue small boat harbor revenue bonds for small boat harbor capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated for such capital improvements, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the construction period of the capital improvement project for which such small boat harbor revenue bonds are issued, to establish, maintain, or increase reserves for the small boat harbor revenue bonds, and to pay the expenses for the issuance of such bonds. The aforementioned small boat harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on the small boat harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from small boat harbors and related facilities under the ownership of the State or operated and managed by the department. The revenues shall include rents, mooring, wharfage, dockage, and permit fees, and other fees or charges presently or hereafter derived from or arising

through the ownership and operation of small boating activities and the furnishing and supplying of the services thereof. The expenses of the issuance of such small boat harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

SECTION 111. **PUBLIC FACILITY REVENUE BONDS.** The Hawaii Community Development Authority is authorized to issue revenue bonds for public facility projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated to construct, acquire, remodel, furnish, and equip any public facility, including acquisition of the site thereof. Additionally, if so determined by the authority and approved by the governor, the principal amount of such bonds shall be in an additional amount deemed necessary by the Authority to pay interest on such revenue bonds during the estimated period of construction of the capital improvement project for which such public facility revenue bonds are issued, to establish, maintain, or increase reserves for such public facility revenue bonds, and to pay all or any part of the expenses related to the issuance of such public facility revenue bonds. The aforementioned public facility revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such public facility revenue bonds, to the extent not paid from the proceeds of such public facility revenue bonds, shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

SECTION 112. **CONVENTION CENTER REVENUE BONDS.** The Convention Center Authority is authorized to issue convention center revenue bonds for capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement projects, and, if so determined by the authority and approved by the governor, such additional principal amount as may be deemed necessary by the authority to pay interest on such convention center revenue bonds during the estimated period of construction of the capital improvement project for which such convention center revenue bonds are issued, to establish, maintain, or increase reserves for such convention center revenue bonds, and to pay all or any part of the expenses related to the issuance of such convention center revenue bonds. The aforementioned convention center revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such convention center revenue bonds, to the extent not paid from the proceeds of such convention center revenue bonds, shall be payable from and secured by revenues available pursuant to section 206X-10.5, Hawaii Revised Statutes, by the revenues derived from a convention center facility or facilities and related facilities under the ownership of the State or operated and managed by the authority, and other rates, rents, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of convention center facilities and related facilities and the furnishing and supplying of the services thereof.

SECTION 113. **HAWAIIAN HOME LANDS REVENUE BONDS.** The department of Hawaiian home lands is authorized to issue Hawaiian home lands

revenue bonds for Hawaiian home lands capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to increase reserves for the Hawaiian home lands revenue bonds and to pay the expenses of the issuance of such bonds. Notwithstanding any limitations contained in any prior authorization of Hawaiian home lands revenue bonds, the aforementioned Hawaiian home lands revenue bonds and all prior authorized revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable from and secured by the revenues from Hawaiian home lands, revenues from available lands and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of Hawaiian home lands, available lands and related facilities. The expenses of the issuance of such Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the Hawaiian home lands special fund.

The governor, in the governor's discretion, is authorized to use the Hawaiian home lands special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by the Hawaiian home lands revenue bond funds.

SECTION 114. **HOUSING REVENUE BONDS.** The Housing and Community Development Corporation of Hawaii is authorized to issue housing revenue bonds for housing capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds in such principal amounts as shall be required to yield the amounts appropriated for such capital improvements, and, if so determined by the corporation and approved by the governor, such additional amounts as may be deemed necessary by the corporation to increase reserves for the housing revenue bonds and to pay the expenses of the issuance of such bonds. The aforementioned housing revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on housing revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable and secured by revenues from housing and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of housing and related facilities.

SECTION 115. **HOSPITAL REVENUE BONDS.** The Hawaii Health Systems Corporation is authorized to issue hospital revenue bonds for hospital capital improvements program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and if so determined by the corporation and approved by the governor, such additional principal amount as may be deemed necessary by the corporation to pay interest on such hospital revenue bonds during the estimated period of construction of the capital improvements program project for

which such hospital revenue bonds are issued, to establish, maintain, or increase reserves for such hospital revenue bonds, and to pay all or any part of the expenses related to the issuance of such hospital revenue bonds. The aforementioned hospital revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time, except that such bonds shall be issued in the name of the corporation and not in the name of the state. The principal of and interest on such hospital revenue bonds, to the extent not paid from the proceeds of such hospital revenue bonds, shall be payable from and secured by the revenues derived from facilities under the ownership of the corporation or operated and managed by the corporation, or such part of any thereof as the corporation may determine, including other moneys, rates, rents, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of hospitals and related facilities and the furnishings and supplying of the services thereof. The expenses related to the issuance of such hospital revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the facility administration fund of the corporation.

PART VII. SPECIAL PROVISIONS

SECTION 116. Provided that to the extent that the sums appropriated for the payment of principal and interest on general obligation bonds are insufficient to meet and pay all such obligations when due in accordance with the terms of such bonds, the governor shall direct the utilization of any or all appropriations available or unexpended from any other state program, as the first charge for the payment of principal and interest of the bonds when due; and provided further that the legislature, under procedures established in section 10 of article III of the Hawaii State Constitution, shall meet in special session to comply with the provisions of section 12 of article VII of the Hawaii State Constitution, which pledge the full faith and credit of the State for the payment of principal and interest on all general obligation and reimbursable general obligation bonds.

SECTION 117. All general obligation bond funds used for a public undertaking, improvement, or system, designated by the letter (D), shall have the bond principal and interest reimbursed from the special fund in which the net revenue, or net user tax receipts, or combination of both, of such public undertaking, improvement or system, are deposited or credited. Bonds issued for irrigation and housing projects shall be reimbursed, as provided by section 174-21 and chapter 201E, Hawaii Revised Statutes, respectively.

The governor is authorized to use, at the governor's discretion, the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the special land and development fund, the economic development special fund, or other appropriate special fund, to finance the respective public undertaking, improvement, or system described above and authorized in this Act, where the method of financing is designated to be by general obligation bond fund with debt service cost to be paid from the funds; provided that the governor shall submit a report to the legislature on such changes in the method of financing of such projects.

SECTION 118. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all general funded, general obligation, and reimbursable general obligation bond funded appropriations made to be expended in fiscal biennium 1999-2001 which are unencumbered as of June 30, 2002, shall lapse as of that date; provided further that this lapsing date shall not apply to appro-

priations for projects described in section 64 of this Act where the means of funding is designated to be the state educational facilities improvement special fund, and where such appropriations have been authorized for more than three years for the construction or acquisition of public school facilities.

SECTION 119. The governor may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project, by this Act or by any other prior or future Act which has not lapsed; and provided further that the total expenditure of funds for all cost elements shall not exceed the total appropriations for that project.

SECTION 120. After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital improvement projects have been met, unrequired balances shall be transferred to the project adjustment fund appropriated in part II and described in part IV of this Act and shall be considered a supplementary appropriation thereto; provided that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 2002, as provided in section 118 of this Act.

SECTION 121. In the event that authorized appropriations specified for capital improvement projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund or the general fund, the governor may make supplemental allotments from the project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital investment cost elements; and provided further that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 122. In the event that authorized appropriations specified for capital improvement projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as special funds, general obligation bond fund with debt service cost to be paid from special funds, revenue bond funds, or revolving funds, the governor may make supplemental allotments from the special fund responsible for cash or debt service payments for the projects or transfer unrequired balances from other unlapsed projects in this or prior appropriation acts which authorized the use of special funds, general obligation bond fund with debt service costs to be paid from special funds, revenue bond funds, or revolving funds; provided that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established; and provided further that the governor shall submit a report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 123. Where it has been determined that changed conditions, such as a reduction in the particular population being served, permit the reduction in the scope of a capital improvement project described in this Act, the governor may authorize such reduction of project scope; and provided that the governor shall

submit a report to the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 124. In releasing funds for capital improvement projects, the governor shall consider the legislative intent and the objectives of the user agency and its programs, the scope and level of the user agency's intended service, and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State. Agencies responsible for construction shall take into consideration the objectives of the user agency, its programs, the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 125. With the approval of the governor, designated expending agencies for capital improvement projects authorized in this Act may delegate to other state or county agencies the implementation of such projects when it is determined by all involved agencies and parties that it is advantageous to do so; and provided that a summary report shall be submitted to the legislature detailing all designated projects as of December 31 and June 30 for each fiscal year.

SECTION 126. Where county capital improvement projects are partially or totally funded by state grants-in-aid as authorized in this Act or any other act of the legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

SECTION 127. The governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of recession, unemployment, natural disasters, unforeseen emergencies, and for any federal aid portion of any capital improvement project described in this Act where application for such aid has been made and approval has been unexpectedly denied; provided that the effects of recession, unemployment, natural disaster, emergencies or unexpected denial of federal aid create an urgent need to pursue a course of action which is in the best interest or the State; provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section.

SECTION 128. No appropriation authorized in this Act for expenditure by a political subdivision of this state shall be considered to be a mandate to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act constitutes such a mandate within the provisions of section 5 of article VIII of the Hawaii State Constitution, such authorization shall be void and, in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for such projects shall be correspondingly decreased.

SECTION 129. Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the governor shall transfer the necessary funds and positions to the proper expending agency; and provided that the governor shall submit a report of all such transfers to the legislature no later than thirty days prior to the 2000 and 2001 regular sessions.

SECTION 130. There is hereby appropriated out of the public trust fund created by section 5(f) of the Admissions Act (Public Law No. 86-3) the total

amount of the proceeds from the sale or other disposition of any lands, and the income therefrom granted to the State by section 5(b) or later conveyed to the State by section 5(e), with the exception of such proceeds covered under section 171-19, Hawaii Revised Statutes, to be disposed of by the board of land and natural resources, and with the exception of such proceeds to be expended by the Office of Hawaiian affairs under chapter 10, Hawaii Revised Statutes, in order to reimburse the general fund for the appropriation made in part II of this Act to the department of education for the support of public schools, to the extent such proceeds are realized for the period beginning July 1, 1999 to June 30, 2001. The above proceeds shall be exclusive of the amount disposed of under the provisions of the Hawaiian Homes Commission Act of 1920, as amended.

SECTION 131. All grants to private organizations in this Act are made in accordance with the standard that the private programs so funded yield direct benefits to the public and accomplish public purposes.

SECTION 132. Any law or provision to the contrary notwithstanding, in allotting funds for social welfare programs, education programs, and other programs and agencies having appropriations which are based on population and workload data as specified in the executive budget document, only so much as is necessary to provide the level of services intended by the legislature shall be allotted by the department of budget and finance. For this purpose, agencies concerned shall reduce expenditures below appropriations under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures so specified.

SECTION 133. With the approval of the director of finance, the department of health may transfer to the department of human services funds appropriated to the department of health for the care and treatment of patients whenever the department of human services can utilize such funds to match federal funds to finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents.

SECTION 134. The department of human services is authorized to enter into agreements with the department of health to furnish outpatient, hospital, and skilled nursing home care of indigents or medical indigents and to pay the department of health for such care. With the approval of the director of finance, the department of health may deposit part of such receipts into the appropriations from which transfers were made.

SECTION 135. Unless otherwise provided in this Act, the governor is authorized to transfer operating funds between appropriations with the same means of financing, within an expending agency for operating purposes; and provided further that the governor shall submit a report to the legislature on all such transfers no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 136. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling, for the purpose of maximizing the utilization of personnel resources and staff productivity; and provided further that all such actions shall be with the prior approval of the governor, and shall be consistent with appropriations provided in this Act, and with provisions of part II of chapter 37, Hawaii Revised Statutes.

SECTION 137. In the event that unanticipated federal funding cutbacks diminish or curtail essential, federally-funded state programs, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining such programs until the next legislative session.

SECTION 138. The governor is hereby authorized to establish five permanent positions during each year of the fiscal biennium 1999-2001 to be allocated by the governor to any of the program areas included in this Act as deemed proper; provided further that no positions shall be established under this section to implement any collective bargaining agreement signed after the legislature adjourns sine die; and provided further that the governor shall submit a report to the legislature on the creation of all such positions no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 139. In the event the State should assume the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of such non-governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 140. Where any agency is authorized by general law to secure funds or other property from private organizations or individuals to be expended or utilized in connection with any authorized program, the agency, with the governor's approval, may enter into such undertaking, provided that the provisions of the undertaking comply with applicable State constitutional and statutory requirements.

SECTION 141. Except as otherwise provided by general law, negotiations for the purchase of land by state agencies shall be subject to the approval of the governor and the department of land and natural resources, or other appropriate agency; and provided further that private lands may be acquired for the purpose of exchange for federal lands when the department of land and natural resources and the governor determine that such acquisition and exchange are necessary for the completion of any project specifically authorized by this Act.

SECTION 142. Provided that statewide savings may be transferred to the forest wildlife resource program (LNR 402), for fire suppression purposes; provided further that funding shall not exceed $300,000 in each fiscal year of fiscal biennium 1999-2001; and provided further that the department of land and natural resources shall submit a report detailing such transfers to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 143. The governor is authorized to transfer savings as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of recession, unemployment, natural disasters, and other unforeseen emergencies; provided further that such effects of recession, unemployment, natural disaster, or other unforeseen emergencies create an urgent need to pursue a course of action which is in the best interest of the State; and provided further that the legislature shall be notified in writing of such transfers of funding no later than fourteen days after the transfer is made.

SECTION 144. Except as otherwise provided, or except as prohibited by specific grant conditions, all federal or non-general fund reimbursements received

by state programs shall be returned to the general fund, or other appropriate program fund; and provided further that the department of budget and finance shall submit a report to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 145. Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of $2,500 for fiscal year 1999-2000 and the sum of $2,500 for fiscal year 2000-2001 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments which are respectively known as its directors, chairpersons, comptroller, adjutant-general, superintendent, librarian, president, and attorney general.

SECTION 146. With the approval of the governor, agencies that use appropriations authorized in part II of this Act for audit services, may delegate that responsibility and transfer funds authorized for that purpose to the internal post audit program (AGS 104), when it is determined by such agencies that it is advantageous to do so.

SECTION 147. With the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for repair and alterations, may delegate responsibility and transfer funds to the construction program (AGS 221), for the implementation of such repair and alterations, when it is determined by such agencies that it is advantageous to do so.

SECTION 148. In conjunction with the initiative to modernize the civil service system a part of which will be the reconsideration of the existing civil service position classification system, it is appropriate that other classification systems which are designed based on the civil service system should also be reviewed. to this end, a redesign team chaired by the director of the department of human resources and comprised of a representative from each of the board of education, department of education, exclusive collective bargaining representative for bargaining unit 6 and the director of the university of Hawaii office of human resources shall be established for the purposes of redesigning the education officers classification and compensation plan. the names of the designated representatives from each of the redesign team members shall be submitted to the director of human resources development by August 1, 1999. based on the results of meeting of the redesign team a new educational officer classification and compensation plan shall be submitted to the legislature by January 5, 2000.

PART VIII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 149. **MISCELLANEOUS.** If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 150. In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 151. Material to be repealed is bracketed. New material in prior enacted laws is underscored.

SECTION 152. **EFFECTIVE DATE.** This Act shall take effect on July 1, 1999.

(Approved June 24, 1999.)

Notes

1. Item vetoed and initialed "BJC".
2. Item vetoed, replaced, and initialed "BJC".

ACT 92 H.B. NO. 1454

A Bill for an Act Relating to Fees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The fees referred to in subsection (a) are:

(1) Except for petitions for temporary restraining order under section 604-10.5, the fee for which shall be the same as that provided in section 607-5(b)(19), for [For] the institution of each action or proceeding, to include all charges except as provided by paragraphs (2) to (6) ..... [$75] $100

(2) Intervention; answer containing one or more cross-claims or counterclaims; third-party complaint, for each such matter $10

(3) Demand for jury trial ..... Fee prescribed by section 607-5

(4) Filing of notice of appeal to the supreme court, to be paid in addition to the deposit of appellate court costs $100

(5) Making of a copy; comparing of copy with original .... Fees prescribed by section 92-21

(6) Posting notice; service fees; garnishee fees; mileage charges; or other services actually performed ..... Amounts necessary to cover actual costs or disbursements[.]

(7) Administrative costs associated with the processing of traffic citations that involve stopping (when prohibited), standing, or parking ..... $5 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended

(8) Administrative costs associated with the processing of traffic citations which do not involve stopping, standing, or parking ..... $20 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended

(9) Administrative costs associated with the processing of traffic citations issued for violations of a statute or ordinance relating to vehicles or their drivers, or owners, except those as provided by paragraphs (7) and (8) ..... $15 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended."

SECTION 2. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) **PART I**

Action or proceeding, general:

(1) Civil action or special proceeding, unless another item in [this] part I applies $200
(2) Appeal to a circuit court $100
(3) Transfer of action to circuit court from district court, in addition to district court fees $125

Trusts:

(4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter $100
(5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter $100
(6) Accounting, this fee to be paid for each account filed and to include the settlement of the account $10
(7) Vesting order ..... no charge under part I
(8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section ..... no charge under part I
(8a) Registration of a trust, or release of registration, under chapter 560 .. $3
(9) Any other proceeding relating to a trust $15

Guardianship of estate or conservatorship:

(10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter $100
(11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter $15
(12) Accounting, same as provided by item (6) in relation to a trust $10
(13) Any other proceeding relating to guardianship of an estate, or a conservatorship ..... no charge under part I

Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:

[(14) Application for appointment of special administrator by order of the court, in addition to fee prescribed by item (15) $10
(15)] (14) Probate, administration, domiciliary foreign personal representative, or ancillary administration, this fee to be paid once only for each decedent's estate $100
[(15a) Informal probate or appointment proceeding under chapter 560, this fee to be paid instead of the fee prescribed by item (15) $100
(15b) Application under chapter 560 for formal testacy proceedings, or for supervised administration, this fee to be paid once only for each decedent's estate as an addition to the fee prescribed by item (15a) ..... $20]

Family court cases:

[(16)] (15) Matrimonial action (annulment, divorce, separation, or separate maintenance) $100
[(17)] (16) Adoption $100
[(18)] (17) Guardianship of the person, including all matters of the nature listed in items (4) to (9) $100
[(19)] (18) Termination of parental rights ..... no charge under part I
[(20)] (19) Any other family court proceeding, except motions or other pleadings in matrimonial, adoption, and guardianship actions, but in-

cluding without limitation custody proceedings even if in the form of an habeas corpus proceeding ..... $15''

SECTION 3. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to part I[1] to be appropriately designated and to read as follows:

"**§607- Assessment for bench warrant issuance.** The court, when issuing a bench warrant for any person who fails to appear or who otherwise fails to comply with a court order, may assess that person a sum not to exceed $50 for the cost of issuing the bench warrant."

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 6. This Act shall take effect on July 1, 1999.

(Approved June 24, 1999.)

Notes

1. No part designations in this chapter.
2. Edited pursuant to HRS §23G-16.5.

ACT 93 S.B. NO. 131

A Bill for an Act Relating to Long-Term Care.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Long-term care is an issue of immense importance. Providing adequate care for the aged and disabled is an economic burden for many people. The legislature finds that long-term care insurance policies offer a means of alleviating that load. The legislature believes that the ideal setting to provide long-term care insurance is through the workplace and that the State should encourage the offering of long-term care insurance in order to provide a modicum of financial security. This Act is a recommendation of the Joint Legislative Committee on Long-Term Care, as contained in its report to the 1999 legislature, Miscellaneous Communication No. 9, dated December 1, 1999.

The purpose of this Act is to increase the number of long-term care insurance policies in effect in Hawaii and to conform Hawaii's long-term care insurance statutes to the July 1998 Long-Term Care Insurance Model Act and Model Regulation of the National Association of Insurance Commissioners.

PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new article to chapter 431, to be appropriately designated and to read as follows:

"ARTICLE LONG-TERM CARE INSURANCE
PART I. LONG-TERM CARE INSURANCE MODEL ACT

§431: -101 Purpose. The purpose of this article is to promote the public interest, to promote the availability of long-term care insurance policies, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage. (1998 NAIC Act Sec. 1)

§431: -102 Scope. The requirements of this article shall apply to policies delivered or issued for delivery in this State on or after July 1, 2000. This article is not intended to supersede the obligations of entities subject to this article to comply with the substance of other applicable insurance laws insofar as they do not conflict with this article, except that laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance. (1998 NAIC Act Sec. 2)

§431: -103 Short title. This article may be known and cited as the "Long-Term Care Insurance Act." (1998 NAIC Act Sec. 3)

§431: -104 Definitions. As used in this article, unless the context requires otherwise, the definitions in this section apply throughout this article.

"Applicant" means:

(1) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(2) In the case of a group long-term care insurance policy, the proposed certificate holder.

"Certificate" means, for the purposes of this article, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this State.

"Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this State and issued to:

(1) One or more employers or labor organizations, or a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or

(2) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
   (A) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
   (B) Has been maintained in good faith for purposes other than obtaining insurance; or

(3) An association or a trust or the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering the policy within this State, the association or the insurer of the association shall file evidence with the commissioner that the association has at the outset a minimum of one hundred persons; has been organized and maintained in good faith for purposes other than that of obtaining insurance; has been in active existence for at least one year; and has a constitution and bylaws which provide that:

(A) The association holds regular meetings not less than annually to further purposes of the members;
(B) Except for credit unions, the association collects dues or solicits contributions from members; and
(C) The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing the association will be deemed to satisfy the organizational requirements unless the commissioner makes a finding that the association does not satisfy those organizational requirements; or

(4) A group other than as described in paragraphs (1), (2), and (3), subject to a finding by the commissioner that:
(A) The issuance of the group policy is not contrary to the best interest of the public;
(B) The issuance of the group policy would result in economies of acquisition or administration; and
(C) The benefits are reasonable in relation to the premiums charged.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

"Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. The term also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or loss of functional capacity.

Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

Notwithstanding any other provision contained herein, any product advertised, marketed, or offered as long-term care insurance shall be subject to this article.

"NAIC" means the National Association of Insurance Commissioners.

"Policy" means, for the purposes of this article, any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this State by an insurer; fraternal benefit society; nonprofit health, hospital, or medical service corporation; prepaid health plan; health maintenance organization; or any similar organization. (1998 NAIC Act Sec. 5 & Reg. Sec. 5)

§431: -105 Extraterritorial jurisdiction; group policies. No group long-term insurance coverage may be offered to a resident of this State under a group policy issued in another state to a group described in paragraph (4) under the definition of "group long-term care insurance" in section 431: -104, unless this

State or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this State has made a determination that these requirements have been met. (1998 NAIC Act Sec. 5)

§431: -106 Rules. The commissioner may adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, non-duplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definition of terms. (1998 NAIC Act Sec. 6A)

§431: -107 Basic standards. (a)[1] No long-term care insurance policy may:

(1) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;
(2) Contain a provision establishing a new waiting period if existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or
(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care. (1998 NAIC Act Sec. 6B)

§431: -108 Preexisting conditions-group and individual policies. (a) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in paragraph (1) of the definition of ''group long-term care insurance'' in section 431: -104 shall use a definition of ''preexisting condition'' which is more restrictive than the following: ''Preexisting condition'' means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services within six months preceding the effective date of coverage of an insured person.

(b) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in paragraph (1) of the definition of ''group long-term care insurance'' in section 431: -104 may exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured person.

(c) The commissioner may extend the limitation periods in subsections (a) and (b) as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(d) The definition of ''preexisting condition'' does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (b) expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (b). (1998 NAIC Act Sec. 6C)

§431: -109 Prior hospitalization; prior institutionalization. (a) No long-term care insurance policy may be delivered or issued for delivery in this State if the policy:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement;

(2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(b) A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label, in a separate paragraph of the policy or certificate, entitled "Limitations or Conditions on Eligibility for Benefits," such limitations or conditions including any required number of days of confinement.

(c) A long-term care insurance policy that conditions eligibility of non-institutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days. (1998 NAIC Act Sec. 6D)

§431: -110 Loss ratio standards; factors; commissioner approval. The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies; provided that a specific reference to long-term care insurance policies is contained in the rule. (1998 NAIC Act Sec. 6E & Reg. Sec. 17)

§431: -111 Right to return; free look provision. Long-term care insurance applicants shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in paragraph (1) of the definition of "group long-term care insurance" in section 431: -104, the applicant is not satisfied for any reason. (1998 NAIC Act Sec. 6F)

§431: -112 Outline of coverage required. (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose. The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitation, the outline of coverage shall be presented in conjunction with any application or enrollment form. In the case of a policy issued to a group defined in paragraph (1) of the definition of "group long-term care insurance" in section 431: -104, an outline of coverage shall not be required to be delivered; provided that the information described subsection (b) is contained in other materials relating to enrollment. Upon request, these other materials shall be made available to the commissioner.

(b) The outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy;
(3) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;
(4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;
(5) A description of the terms under which the policy or certificate may be returned and premium refunded; and
(6) A brief description of the relationship of costs of care and benefits. (1998 NAIC Act Sec. 6G)

§431: -113 Group policy certificate requirements. A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this State shall include:
(1) A description of the principal benefits and coverage provided in the policy;
(2) A statement of the principal exclusions, reductions, and limitations contained in the policy; and
(3) A statement that the group master policy determines governing contractual provisions. (1998 NAIC Act Sec. 6H)

§431: -114 Life insurance policies offering long-term care benefits. (a) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the policy summary shall also include:
(1) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
(2) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits if any, for each covered person;
(3) Any exclusions, reductions, and limitations on benefits of long-term care;
(4) A statement that any long-term care inflation protection option required by 431: -220 is not available under this policy;
(5) If applicable to the policy type, the summary shall also include a disclosure of the effects of exercising other rights under the policy, a disclosure of guarantees related to long-term care costs of insurance charges, and current and projected maximum lifetime benefits; and
(6) The provisions of the policy summary listed above may be incorporated into a basic illustration required to be delivered or into the life insurance policy summary which is required to be delivered.

(b) Any time a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include:
(1) Any long-term care benefits paid out during the month;
(2) An explanation of any changes in the policy, for example death benefits or cash values, due to long-term care benefits being paid out; and
(3) The amount of long-term care benefits existing or remaining.

(c) Any policy advertised, marketed, or offered as long-term care or nursing home insurance shall comply with this article. (1998 NAIC Act Sec. 6I-K)

§431: -115 Incontestability period-group and individual policies. (a) For a policy or certificate that has been in force for less than six months an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance of coverage.

(b) For a policy or certificate that has been in force at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance of coverage and which pertains to the condition for which benefits are sought.

(c) After a policy or certificate has been in force for two years it is not contestable solely upon the grounds of misrepresentation alone. The policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(d) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection, "field issued" means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third party administrator by an insurer.

(e) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer if the policy or certificate is rescinded.

(f) In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies shall be governed by article 10D of this chapter. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care. (1998 NAIC Act Sec. 7)

§431: -116 Nonforfeiture benefits. (a) Except as provided in subsection (b), a long-term care insurance policy shall not be delivered or issued for delivery in this State unless the policyholder or certificate holder has been offered an option to purchase a policy or certificate that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rates.

(b) For a group long-term care insurance policy, the offer of a nonforfeiture benefit under subsection (a) shall be made to the group policyholder. However, if the policy is issued as a group long-term care insurance, other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

(c) The commissioner shall adopt rules to specify the type of nonforfeiture benefits to be offered as part of long-term care insurance policies or certificates, the standards for nonforfeiture benefits, and the rules for contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse shall be available and the substantial premium rate increase that triggers a contingent benefit upon lapse as provided in subsection (a). (1998 NAIC Act Sec. 8)

§431: -117 Authority to promulgate regulations. The commissioner may issue reasonable regulations to promote premium adequacy and to protect the policyholder in the event of substantial rate increases, and to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. (1998 NAIC Act Sec. 9)

PART II. LONG-TERM CARE INSURANCE MODEL REGULATION

§431: -201 Policy definitions. (a) No long-term care insurance policy delivered or issued for delivery in this State shall use the terms set forth in this section, unless the terms are defined in the policy and the definitions satisfy the following requirements:

"Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

"Acute condition" means that the individual is medically unstable. This individual requires frequent monitoring by medical professionals such as physicians and registered nurses, in order to maintain the individual's health status.

"Adult day care" means a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

"Bathing" means washing oneself by sponge bath, or in either a tub or shower, including the task of getting into or out of the tub or shower.

"Cognitive impairment" means a deficiency in a person's short- or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

"Continence" means the ability to maintain control of bowel and bladder function, or when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

"Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

"Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

"Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

"Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. These services may include homemaker services, assistance with activities of daily living, and respite care services.

"Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof,"[1] or words of similar import.

"Mental or nervous disorder" means neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder, and shall not be defined beyond these terms.

"Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

"Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

"Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

"Transferring" means moving into or out of a bed, chair or wheelchair.

(b) All providers of services, including but not limited to a "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified. (1998 NAIC Reg. Sec. 5)

§431: -202 Renewability. (a) The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of section 431: -211. A policy issued to an individual shall not contain renewal provisions other than guaranteed renewable or noncancellable.

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" means the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate. (NAIC Reg. Sec. 6A)

§431: -203 Limitations and exclusions. (a) A policy may not be delivered or issued for delivery in this State as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(1) Preexisting conditions or diseases;
(2) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;
(3) Alcoholism and drug addiction;
(4) Illness, treatment, or medical condition arising out of:
    (A) War or act of war, whether declared or undeclared;
    (B) Participation in a felony, riot, or insurrection;
    (C) Service in the armed forces or units auxiliary thereto;
    (D) Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
    (E) Aviation (this exclusion applies only to non-fare-paying passengers); or
(5) Treatment provided in a government facility (unless required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid) any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle insurance law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(b) This section is not intended to prohibit exclusions and limitations by type of provider or territorial limitations. (1998 NAIC Reg. Sec. 6B)

§431: -204 Extension of benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy. (1998 NAIC Reg. Sec. 6C)

§431: -205 Continuation or conversion. (a) Group long-term care insurance issued in this State beginning July 1, 2000, shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For purposes of this section, for ''a basis for continuation of coverage'' means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(c) For purposes of this section, ''a basis for conversion of coverage'' means a policy provision that entitles an individual, whose coverage under the group policy would otherwise terminate or has been terminated for any reason including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy or any group policy that it replaced for at least six months immediately prior to termination shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(d) For purposes of this section, ''converted policy'' means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(e) Written application for the converted policy shall be made and the first premium, if any, shall be paid as directed by the insurer no later that thirty-one days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(f) Unless the group policy from which conversion is made is replaced[1] previous group policy coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced a previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(1) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(2) The terminating coverage is replaced not later than thirty-one days after termination by another group coverage effective on the day following the termination of coverage:

(A) Providing benefits or benefits determined by the commissioner to be identical substantially equivalent to or in excess of those provided by the terminating coverage; and

(B) The premium for which is calculated in a manner consistent with the requirements of subsection (f).

(h) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more that one hundred per cent of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage or reciprocal beneficiary relationship.

(k) For purposes of this section "managed care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks. (1998 NAIC Reg. Sec. 6D)

§431: -206 Discontinuance and replacement. If a group long-term care insurance policy is replaced by another group long-term care insurance policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to person under the new group policy shall not:

(1) Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(2) Vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services. (1998 NAIC Reg. Sec. 6E)

§431: -207 Premiums charged-group and individual policies. (a) The premium charged to an insured shall not increase due to either:

(1) Increasing age of the insured at ages beyond sixty-five; or

(2) The duration the insured has been covered under the policy.

(b) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under section 431: -233,

the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(c) A reduction of benefits shall not be considered a premium change, but for purpose of calculation required under section 431: -233, the initial annual premium shall be based on reduced benefits. (1998 NAIC Reg. Sec. 6F)

§431: -208 Unintentional lapse. (a) Each insurer offering long-term care insurance, as a protection against unintentional lapse, shall comply with this section.

(b) No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation shall provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address.

(c) In the case of an applicant who elects not to designate an additional person, the waiver shall state:

"Protection Against Unintended Lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(d) The insurer shall notify the insured of the right to change this written designation, no less often than every two years.

(e) When the policyholder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the notice requirement contained in subsection (c) need not be met until sixty days after the policyholder or certificate holder is no longer on a payment plan. The application or enrollment form for these policies or certificates shall clearly indicate the payment plan selected by the applicant. (1998 NAIC Reg. Sec. 7A)

§431: -209 Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated in section 431: -208 at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid and notice may not be given until thirty days after a premium is unpaid. Notice shall be deemed to have been given as of five days after the date of mailing. (1998 NAIC Reg. Sec. 7A)

§431: -210 Reinstatement. In addition to the requirements of sections 431: -208 and 431: -209, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility

criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate. (1998 NAIC Reg. Sec. 7B)

§431: -211 Disclosure; renewability. Individual long-term care insurance policies shall contain a renewability provision. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision shall not apply to policies that do not contain a nonrenewability provision, and under which the right to nonrenew is reserved solely to the policyholder. (1998 NAIC Reg. Sec. 8A)

§431: -212 Disclosure; riders and endorsements. (a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after the date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issuance, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing by the insured, except if the increased benefits or coverages are required by law.

(c) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement. (1998 NAIC Reg. Sec. 8B)

§431: -213 Disclosure; payment of benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or similar words or phrases shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage. (1998 NAIC Reg. Sec. 8C)

§431: -214 Disclosure; limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations." (1998 NAIC Reg. Sec. 8D)

§431: -215 Disclosure; other limitations and conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in section 431: -109 shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall be labeled as "Limitations or Conditions on Eligibility of Benefits." (1998 NAIC Reg. Sec. 8E)

§431: -216 Disclosure of tax consequences. With regard to life insurance policies that provide for an accelerated benefit for long-term care, a disclosure is required at the time of application for the policy and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy and any other related documents. (1998 NAIC Reg. Sec. 8F)

§431: -217 Disclosure; benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section. If these benefit triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified. (1998 NAIC Reg. 8G)

§431: -218 Prohibition against post-claims underwriting. (a) All applications for long-term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(b) If an application for long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(c) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(d) Except for policies or certificates which are guaranteed issue:

(1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:
"CAUTION: If your answers on this application are incorrect or untrue, the (company) has the right to deny benefits or rescind your policy.";

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:
"CAUTION: The issuance of this long-term care insurance (policy) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address).";

(3) Prior to issuance of a long-term care policy or certificate to an applicant age eighty or older, the insurer shall obtain one of the following:
(A) A report of a physical examination;
(B) An assessment of functional capacity;
(C) An attending physician's statement; or
(D) Copies of medical records.

(d)[1] A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(e)[1] Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated. Every insurer shall annually furnish this information to the insurance commissioner in the format prescribed by the National Association of Insurance Commissioners in Appendix A

to the July 1998 NAIC Long-Term Care Insurance Model Regulations. (1998 NAIC Reg. Sec. 9)

§431: -219 Minimum standards for home health and community care benefits. (a) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits by:

(1) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(2) Requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

(3) Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(4) Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of the person's licensure or certification;

(5) Excluding coverage for personal care services provided by a home health aide;

(6) Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(7) Requiring that the insured or claimant have an acute condition before home health care services are covered;

(8) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(9) Excluding coverage for adult day care service.

(b) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

(c) Home health care coverage may be applied to nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate. (1998 NAIC Reg. Sec. 10)

§431: -220 Requirement to offer inflation protection; group and individual policies. (a) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(1) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less that five per cent;

(2) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the

difference between the existing policy benefit and that benefit compounded annually at a rate of at least five per cent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(3) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(b) Where the policy is issued to a group, the required offer in subsection (a) shall be made to the group policyholder; except if the policy is issued to a group defined in paragraph (4) under the definition of "group long-term care insurance" in section 431: -104 other than to a continuing care retirement community, the offering shall be made to each certificate holder.

(c) The offer in subsection (a)(2) shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(d) Insurers shall include the following information in or with the outline of coverage:

(1) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty year period.

(2) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(e) Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy[1]

(f) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(g) Inflation protection in subsection (a)(2) shall be included in a long-term care insurance policy unless the insurer obtains a rejection of inflation protection signed by the policyholder as required in subsection (h).

(h) The rejection shall be considered a part of the application and shall state:

"I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____, and I REJECT INFLATION PROTECTION." (1998 NAIC Reg. Sec. 11)

§431: -221 Requirements for application forms and replacement coverage. (a) Application forms shall include questions designed to elicit information as to whether, as of the date of application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing the questions may be used. With regard to a replacement policy issued to a group defined by paragraph (1) under the definition of "group long-term care insurance" in section 431: -104, the following questions may be modified only to the extent necessary to elicit information about health and long-term care insurance policies other than the group policy being replaced; provided that the certificate holder has been notified of the replacement:

(1) Do you have another long-term care insurance policy or certificate in force (including a health care service contract or health maintenance organization contract)?

(2) Did you have another long-term care insurance policy or certificate in force during the last twelve months?
(A) If so, with which company?
(B) If that policy lapsed, when did it lapse?
(3) Are you covered by Medicaid?
(4) Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(b) Agents shall list any other health insurance policies they have sold to the applicant, and the agent shall list policies sold that are still in force and list policies sold in the past five years that are no longer in force.

(c) Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the same manner as shown in Section 12(C) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.

(d) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the same manner as shown in Section 12(D) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.

(e) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. Notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(f) Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements for life insurance policies. If a life insurance policy that accelerates benefits for long-term care is replaced by another policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements. (1998 NAIC Reg. Sec. 12)

§431: -222 Reporting requirements. (a) Every insurer shall maintain records for each agent of the agent's amount of replacement sales as a per cent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a per cent of the agent's total annual sales.

(b) Every insurer shall report annually by June 30 the ten per cent of its agents with the greatest percentages of lapses and replacements as measured in subsection (a).

(c) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(d) Every insurer shall report annually by June 30 the number of lapsed policies as a per cent of its total annual sales and as a per cent of its total number of policies in force as of the end of the preceding calendar year.

(e) Every insurer shall report annually by June 30 the number of replacement policies sold as a per cent of its total annual sales and as a per cent of its total number of policies in force as of the end of the preceding calendar year;

(f) For purposes of this section, ''policy'' means only long-term care insurance and ''report'' means on a statewide basis. (1998 NAIC Reg. Sec. 13)

§431: -223 Discretionary powers of the commissioner. The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this part with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) The modification or suspension would be in the best interest of the insureds;

(2) The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3) One of the following conditions have been met:

(A) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

(B) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or

(C) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product. (1998 NAIC Reg. Sec. 15)

§431: -224 Reserve standards; life insurance policies or riders. (a) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, the policy reserves for the benefits shall be determined in accordance with section 431:5-307. Claim reserves shall also be established in the case where the policy or rider is in claim status.

(b) Reserves for policies subject to this section shall be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(c) In the development and calculation of reserves for policies and riders subject to this section, due regard shall be given to applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs, including but not limited to the following:

(1) Definition of insured events;

(2) Covered long-term care facilities;

(3) Existence of home convalescence care coverage;

(4) Definition of facilities;

(5) Existence or absence of barriers to eligibility;

(6) Premium waiver provision;

(7) Renewability;

(8) Ability to raise premiums;

(9) Marketing method;

(10) Underwriting procedures;

(11) Claims adjustment procedures;

(12) Waiting period;
(13) Maximum benefit;
(14) Availability of eligible facilities;
(15) Margins in claim costs;
(16) Optional nature of benefit;
(17) Delay in eligibility for benefit;
(18) Inflation protection provisions; and
(19) Guaranteed insurability option.

(d) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries. (1998 NAIC Reg. Sec. 16A)

§431: -225 Reserve standards; insurance other than life. When long-term care benefits are provided through insurance other than as in section 431: -224, reserves shall be determined by a table certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries and filed with the commissioner. (1998 NAIC Reg. Sec. 16B)

§431: -226 Loss ratio. (a) Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums; provided that the expected loss ratio is at least sixty per cent, calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio due consideration shall be given to all relevant factors, including:

(1) Statistical credibility of incurred claims experience and earned premiums;
(2) The period for which rates are computed to provide coverage;
(3) Experienced and projected trends;
(4) Concentration of experience within early policy duration;
(5) Expected claim fluctuation;
(6) Experience refunds, adjustments, or dividends;
(7) Renewability features;
(8) All appropriate expense factors;
(9) Interest;
(10) Experimental nature of the coverage;
(11) Policy reserves;
(12) Mix of business by risk classification, if applicable; and
(13) Product features such as long elimination periods, high deductibles, and high maximum limits.

(b) For purposes of this section, the commissioner shall consult with a qualified long-term care actuary.

(c) Subsection (a) shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

(1) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
(2) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements for life insurance;
(3) The policy meets the disclosure requirements of section 431: -114 as applicable;

(4) Any policy illustration that meets the applicable requirements for policy illustration;
(5) An actuarial memorandum is filed with the insurance division that includes:
(A) A description of the basis on which the long-term care rates were determined;
(B) A description of the basis for the reserves;
(C) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
(D) A description and a table of each actuarial assumption used. For expenses, an insurer shall include per cent of premium dollars per policy and dollars per unit of benefits, if any;
(E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
(F) The estimated average annual premium per policy and the average issue age;
(G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used, and if used, the statement shall include a description of the type or types of underwriting used such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
(H) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status. (1998 NAIC Reg. Sec. 17)

§431: -227 Filing requirements. Prior to an insurer or similar organization offering group long-term care insurance to a resident of this State pursuant to section 431: -105, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this State. (1998 NAIC Reg. Sec. 18)

§431: -228 Filing requirements. (a) Every insurer, health care service plan, or other entity providing long-term care insurance or benefits in this State shall provide a copy of any long-term care insurance advertisement intended for use in this State whether through written, radio, or television medium to the commissioner for review or approval by the commissioner to the extent it may be reviewed under state law. In addition, all advertisements shall be retained by the insurer, health care service plan, or other entity for at least three years from the date the advertisement was first used.

(c)[1] The commissioner may exempt from the requirements of this section any advertising form or material when, in the commissioner's opinion, this requirement may not reasonably be applied. (1998 NAIC Reg. Sec. 19)

§431: -229 Standards for marketing. (a) Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this State, directly or through producers, shall:
(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(2) Establish marketing procedures to assure excessive insurance is not sold or issued;

(3) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.";

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance currently has long-term care insurance and the types and amounts of any such insurance;

(5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with subsection (a);

(6) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer, at solicitation, shall provide written notice to the prospective policyholder or certificate holder of a state senior insurance counseling program including the name, address, and telephone number of the program; and

(7) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to section 431: -202.

(b) In addition to the acts or practices prohibited in article 13 of this chapter, all of the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company. (1998 NAIC Reg. Sec. 20A & 20B)

§431: -230 Standards of marketing-certain group policies. (a) With respect to the obligations set forth in this section, the primary responsibility of an association as defined in paragraph (2) of the definition of "group long-term care insurance" under section 431: -104, when endorsing or selling long-term care insurance, shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold through the association to ensure that members of the association receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(b) The insurer shall file the following information with the commissioner:

(1) The policy and certificate;

(2) A corresponding outline of coverage; and

(3) All advertisements requested by the commissioner.

(c) The association shall disclose in any long-term care insurance solicitation:

(1) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees, and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(2) A brief description of the process under which the policies and the insurer issuing the policies were selected.

(d) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(e) The board of directors of an association endorsing or selling long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(f) The association shall also:

(1) At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including benefits, features, and rates, and update the examination thereafter in the event of material change;

(2) Actively monitor the marketing efforts of the insurer and its agents; and

(3) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

(g) No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the commissioner the information required in this section.

(h) The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this section.

(i) Failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice in violation of article 13 of this chapter. (1998 NAIC Reg. Sec. 20C)

§431: -231 Suitability. (a) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

(b) Every insurer, health care service plan, or other entity marketing long-term care insurance (the "issuer") shall:

(1) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(2) Train its agents in the use of its suitability standards; and

(3) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(c) To determine whether the applicant meets the standards developed by the issuer, the agent and issuer shall develop procedures that take the following into consideration:

(1) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(2) The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(3) The values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

The issuer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out above. The efforts shall include presentation to the applicant, at or prior to application, the ''Long-Term Care Insurance Personal Worksheet.'' The personal worksheet used by the issuer shall contain, at a minimum, information in the format contained in Appendix B of the July 1998 NAIC Long-Term Care Insurance Model Regulations in not less than twelve point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

(d) A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(e) The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Appendix B of the July 1998 NAIC Long-Term Care Insurance Model Regulations is prohibited.

(f) The issuer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to a particular applicant is appropriate. The agents shall use the suitability standards developed by the issuer in marketing long-term care insurance.

(g) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled ''Things You Should Know Before You Buy Long-Term Care Insurance'' shall be provided. The form shall be in the format contained in Appendix C to the July 1998 NAIC Model Long-Term Care Insurance Model Regulation, in not less than twelve point type.

(h) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to the July 1998 NAIC Long-Term Care Insurance Model Regulations, Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternate method of verification shall be made part of the applicant's file.

(i) The issuer shall report annually to the commissioner the total number of applications received from residents of this State, the number of those who declined to provide information on a personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter. (1998 NAIC Reg. Sec. 21)

§431: -232 Prohibition against preexisting conditions and probationary periods in replacement policies and certificates. If a long-term care insurance policy or certificate replaces another long-term care insurance policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy. (1998 NAIC Reg. Sec. 22)

§431: -233 Nonforfeiture benefit requirement. (a) This section does not apply to life insurance policies containing accelerated long-term care benefits.

(b) To comply with the requirement to offer a nonforfeiture benefit pursuant to section 431: -116, the following shall be met:

(1) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection (h); and

(2) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(c) If the offer required to be made under section 431: -116 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

(d) After rejection of the offer required under section 431: -116, for individual and group policies without nonforfeiture benefits issued after June 30, 2000, the insurer shall provide a contingent benefit upon lapse.

(e) If a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(f) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the table below based on the insured's issue age, and the policy or certificate lapses within one hundred twenty days of the due date of the premium so increased. Unless otherwise required, policyholders and certificate holders shall be notified at least thirty days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Per Cent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%

79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(g) On or before the effective date of a substantial premium increase as defined in subsection (f), the insurer shall:

(1) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(2) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (h). This option may be elected at any time during the one hundred twenty day period referenced in subsection (f); and

(3) Notify the policyholder and certificate holder that a default or lapse at any time during the one hundred twenty day period under subsection (f) shall be deemed to be the election offer to convert in paragraph (2).

(h) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection, as follows:

(1) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one per cent per year prior to age fifty, and at least three per cent per year beyond age fifty;

(2) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) shall be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as provided in paragraph (3);

(3) The standard nonforfeiture credit shall be equal to one hundred per cent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard forfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection (i);

(4) The nonforfeiture benefit and contingent benefit upon lapse shall begin not later than the end of the third year following the policy or certificate issue date. Notwithstanding the preceding sentence, except for a policy or certificate with a contingent benefit upon lapse or a policy or certificate with attained age rating, the nonforfeiture benefit shall begin the earlier of:

(A) The end of the tenth year following the policy or certificate issue date; or

(B) The end of the second year following the date the policy or certificate is no longer subject to attained age rating; and

(5) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(i) All benefits paid by the insurer while the policy or certificate is in premium paying status and in paid up status shall not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

(j) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

(k) The requirements set forth in this section shall become effective July 1, 2000, and shall apply as follows:

(1) This section shall apply to any long-term care policy issued in this State after June 30, 2000; and

(2) For certificates issued after June 30, 2000, under a group long-term care insurance policy as defined in paragraph (1) under the definition of ''group long-term care insurance'' in section 431: -104, which policy was in force on July 1, 2000, this section shall not apply.

(l) Premiums charged for a policy or certificate containing nonforfeiture benefits or contingent benefit on lapse shall be subject to the loss ratio requirements of section 431: -226 treating the policy as a whole.

(m) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (f), a replacing insurer that purchases or assumes a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer. (NAIC Act 8 & Reg. Sec. 23)

§431: -234 Standards for benefit triggers. (a) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

(b) Activities of daily living shall include at least the following as defined in section 431: -201 and the policy: bathing, continence, dressing, eating, toileting, and transferring. Insurers may use activities of daily living to trigger covered benefits in addition to those contained in the preceding sentence as long as they are defined in the policy.

(c) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate, however the provisions shall not restrict and are not in lieu of the requirements under subsections (a) and (b).

(d) For purposes of this section the determination of a deficiency shall not be more restrictive than:

(1) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(2) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(e) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

(f) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(g) The requirements set forth in this section shall be effective July 1, 2000, and shall apply as follows:

(1) Except as provided in paragraph (2), this section applies to a long-term care policy issued in this State after the[1] June 30, 2000;

(2) For certificates issued after June 30, 2000, under a group long-term care insurance policy as defined in paragraph (1) under the definition of ''group long-term care insurance'' in section 431: -104, which policy was in force on July 1, 2000, this section shall not apply. (1998 NAIC Reg. Sec. 24)

§431: -235 Standards format outline of coverage; group and individual policies. (a)[1] This section implements, interprets, and makes specific, the provisions of section 431: -112 in prescribing a standard format and the content of an outline of coverage, as follows:

(1) The outline of coverage shall be a free-standing document, using no smaller than ten-point type;

(2) The outline of coverage shall contain no material of an advertising nature;

(3) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring;

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated; and

(5) The format for outline of coverage shall be substantially similar to the Outline of Coverage in section 25 of the July 1998 NAIC Long-Term Care Insurance Model Regulation. (1998 NAIC Reg. Sec. 25)

§431: -236 Delivery of shopper's guide; group and individual policies. (a) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(b) In the case of agent solicitations, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.

(c) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with application or enrollment form.

(d) Life insurance policies containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under sections 431: -106 to 431: -114. (1998 NAIC Reg. Sec. 26)

PART III. FEDERAL CONFORMITY

§431: -301 Group long-term care insurance policies conformance to HIPAA and Internal Revenue Code. (a) Every group long-term care insurance policy sold after June 30, 2000, may conform to subtitle C of the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191, as amended, and to section 7702B of the Internal Revenue Code of 1986, as amended; provided that if it does not conform, then it shall not qualify for federal or state income tax benefits.

(b) A group long-term care insurance policy may provide coverage, at a minimum, for ''qualified long-term care services'', as defined in subtitle C of the

Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191, as amended, and in section 7702B of the Internal Revenue Code of 1986, as amended.

(c) For the purpose of subsection (b) and for the purpose of describing examples of services typically found in this State, coverage shall be one or more of the following services or any combination of services:

(1) Home health care services, as defined in section 431: -201;
(2) Adult day care, as defined in section 431: -201;
(3) Adult residential care home, as defined in section 321-15.1;
(4) Extended care adult residential care home, as defined in section 323D-2;
(5) Nursing home, as defined in section 457B-2;
(6) Skilled nursing facilities and intermediate care facilities, as referenced in section 321-11(10);
(7) Hospices, as referenced in section 321-11;
(8) Assisted living facility, as defined in section 323D-2;
(9) Personal care, as defined in section 431: -201;
(10) Respite care, as defined in section 333F-1; and
(11) Any other care as provided by rule of the commissioner.

§431: -302 Individual long-term care insurance policy coverages. (a) Every individual long-term care insurance policy sold after June 30, 2000, shall provide coverage for one or more of the types of care enumerated under section 431: -301(c).

(b) An individual long-term care insurance policy sold after June 30, 2000, shall not be required to conform to subtitle C of the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191, as amended, and to section 7702B of the Internal Revenue Code of 1986, as amended; provided that if it does not conform, then it shall not qualify for federal or state income tax benefits.

§431: -303 Conflict with HIPAA. If a conflict occurs between a provision of this article and the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended, the provision shall be deemed amended to comply with that federal Act and any related regulations, to the extent that a particular policy is intended to qualify for federal income tax benefits.

§431: -304 Disclosure of qualification for tax benefits. (a) Every policy that is intended to be a qualified long-term care insurance contract as provided in the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended, shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is intended to be a federally qualified long-term care insurance contract and may qualify you for federal and state tax benefits."

(b) Every policy that is not intended to be a qualified long-term care insurance contract as provided in the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended, shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is not intended to be a federally qualified long-term care insurance contract and is not intended to qualify you for federal and state tax benefits."

PART IV. UNIVERSAL AVAILABILITY OF LONG-TERM CARE INSURANCE

§431: -401 Publicizing of policies. For purposes of section 371- , upon request by an employer, labor organization, retiree organization, or other entity specified under the definition of "group long-term care insurance" in section 431: -104, an insurer that is subject to this part shall be allowed, if it chooses, to publicize a long-term care policy and may sell and underwrite that policy.

§431: -402 Purchase of policy and payment of premiums on an individual's behalf. An insurer shall allow a person to purchase an individual or group long-term care insurance policy and pay the premiums for an individual or group long-term care insurance policy that covers the person, the person's spouse, or reciprocal beneficiary, as well as their parents and grandparents, and in-law parents and grandparents. Nothing in this section shall preclude an insurer from underwriting such a policy."

SECTION 3. Chapter 371, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§371- Employers and entities offering long-term care insurance policies. (a) No later than July 1, 2000, every employer, labor organization, retiree organization, or other entity specified under the definition of "group long-term care insurance" under section 431: -104, may apply the guidelines set out in Title 29, Code of Federal Regulations, section 2510.3-1(j), as amended, if the employer chooses to offer group or group-type long-term care insurance as a benefit to employees in compliance with the federal Employee Retirement Income Security Act of 1974.

(b) Beginning July 1, 2000, every insurer, if it chooses, shall be allowed by every employer, labor organization, retiree organization, or other entity specified under the definition of "group long-term care insurance", if they choose, to publicize one or more long-term care insurance policies that are made available under section 431: -401.

(c) This section shall not be construed to affect the marketing by insurers of individual long-term care insurance policies to an employer, labor organization, retiree organization, or other entity specified under the definition of "group long-term care insurance" under section 431: -104."

SECTION 4. Section 87-23.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The board [of trustees] shall determine the benefits of a long-term care benefits plan for employee-beneficiaries, their spouses or reciprocal beneficiaries, as well as their parents and grandparents, and in-law parents and grandparents, and qualified-beneficiaries. The plan shall comply with [the provisions of] article [10A, part V,] _____, of chapter 431[, upon initial plan implementation only].

(b) Notwithstanding any other law to the contrary, [such] the benefits shall be available only to employee-beneficiaries, their spouses or reciprocal beneficiaries, as well as their parents and grandparents, and in-law parents and grandparents, and qualified-beneficiaries who enroll between the ages of twenty and eighty-five. Eligible persons must comply with the plan's age, enrollment, medical underwriting, and contribution requirements."

SECTION 5. Section 431:2-201.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as it relates to group and individual health insurance[,] and to long-term care insurance to the extent provided in article ___ of chapter 431, shall apply to title 24, except:

(1) Where state law provides greater health benefits or coverage than the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 then the state law shall be applicable;

(2) This section shall not be applicable or affect life insurance, endowment, or annuity contracts, or any supplemental contract thereto, described in section 431:10A-101(4);

(3) The following definitions shall be used when applying the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191:

(A) "Employee" means an employee who works on a full-time basis with a normal workweek of twenty hours or more;

(B) "Group health issuer" means all persons offering benefits under group health plans, but shall not include those persons offering benefits exempted from title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 under section 706(c) of the Employee Retirement Income Security Act of 1974 and sections 2747 and 2791(c) of the Public Health Service Act; and

(C) "Small employer" means an employer who employs between one and no more than fifty employees;

(4) All group health issuers shall offer group health plans to small employers whose employees live, work, or reside in the group health issuer's service areas; provided that the commissioner may exempt a group health issuer if the commissioner determines that the group health issuer does not have the capacity to deliver services adequately to enrollees of additional groups given its obligation to existing employer groups; and

(5) A group health issuer shall be prohibited from imposing any preexisting condition exclusion."

SECTION 6. Section 432:1-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Part III of article 10A, and article ___ of chapter 431 shall apply to nonprofit medical indemnity or hospital service associations. Such associations shall be exempt from the provisions of part I of article 10A; provided that such exemption is in compliance with applicable federal statutes and regulations."

PART III
JOINT LEGISLATIVE COMMITTEE SUNSET

SECTION 7. Act 339, Session Laws of Hawaii 1997, is amended by amending section 4 to read as follows:

"SECTION 4. The joint legislative committee shall submit a report of its findings and recommendations to the legislature by December 1, 1998. The joint legislative committee shall cease to exist on June 30, [1999.] 2000."

PART IV

SECTION 8. Chapter 431:10A, Part V, Hawaii Revised Statutes, is repealed.

PART V
ACTUARIAL STUDY

SECTION 9. The joint legislative committee on long-term care shall contract for a study on the feasibility and advisability of establishing a state-sponsored universal program of long-term care that offers comprehensive, protective coverage to the largest numbers of people through either a mandatory tax-based or voluntary premium funding approach. The study shall include, but not be limited to, alternative models of:

(1) Front-end universal program in which coverage would begin either with:
   (A) The first two years of nursing home care or comparable type care; or
   (B) One and a half years or other length of time, of community or home care covered by the program,

   with a reliance upon private insurance for the remaining years;
(2) Back-end universal program in which coverage would begin on the 366th day of disability and include nursing home care or comparable care, or community or home care, or any combination of these, with the first year to be covered out of pocket or by privately purchased long-term care insurance; or
(3) Comprehensive universal program to provide lifetime full coverage, regardless of private insurance coverage.

The study shall further include an analysis of the provisions of House Bill No. 31, H.D. 1 and H.D. 2, Regular Session of 1993, that proposed the "Hawaii Family Hope Program Act", and make recommendations on legislation for introduction in the 2000 regular session, including figures for the amount of a tax to be imposed and a premium to be collected.

For purposes of this study, the joint legislative committee on long-term care may contract with one or more of the same consultants and advisers, excluding legal consultants, who provided services to the Executive Office on Aging for its reports, "Financing Long Term Care, A Report to the Hawaii State Legislature", dated January, 1991, and "The Long Term Care Advisory Board, Report to the Hawaii State Legislature", dated February, 1992; provided that procurement of services from the same consultants and advisers shall be exempt from any of the provisions of the Hawaii Public Procurement Code, as provided by section 103D-102(b)(6), Hawaii Revised Statutes, on the basis that this study is an update of those reports to design a state-sponsored universal long-term care model that accounts for current statistics and the condition of the State's economy. Inasmuch as the groundwork for this follow-up study has been laid in those previous reports by the same consultants and advisers, the legislature finds that contracting with new consultants and advisers would triple the cost of the study and would be unnecessary duplication of work. The legislature further finds that the same consultants and advisers are qualified to conduct this follow-up study.

SECTION 10. The consultants hired under section 11 of this Act shall submit a report of findings and recommendations to the governor and the legislature not later than November 15, 1999. Based on that report, the joint legislative committee on long-term care shall draft legislation, with the advice of the consultants, for introduction in the regular session of 2000; provided that the services of the consultants for advising in drafting the legislation shall be considered as a part of their services under section 11.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii, the sum of $100,000, or so much thereof as may be necessary for fiscal year 1999-2000, for the joint legislative committee on long-term care to hire consultants to conduct a study on the feasibility and advisability of establishing a state-sponsored universal program of long-term care that offers comprehensive, protective coverage.

SECTION 12. The sum appropriated by section 11 of this Act shall be expended by the joint legislative committee on long-term care.

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary, for fiscal year 1999-2000 for expenses of the joint legislative committee on long-term care to conduct one public briefing each on Oahu, Kauai, and Maui, and two public briefings on Hawaii, on the findings and recommendations of the actuarial study undertaken pursuant to section 11 of this Act.

House of Representatives	$5,000
Senate	$5,000

SECTION 14. The sums appropriated by section 13 shall be expended by the house of representatives and the senate respectively.

PART VI

SECTION 15. In codifying this Act, the revisor of statutes shall insert the number of this Act in section 7 of this Act. The revisor of statutes also shall place a derivation table at the front of the new article added to chapter 431, Hawaii Revised Statutes, by section 2 of this Act, showing the Hawaii Revised Statutes section number and the National Association of Insurance Commissioner (NAIC) Model Act section number or Regulation (Reg) section number. These references in the new article shall be deleted from the text of the Act when codified.

SECTION 16. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 18. This Act shall take effect on July 1, 2000; provided that sections 7, and 9 to 18 shall take effect on July 1, 1999.

(Approved June 24, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 94 S.B. NO. 365

A Bill for an Act Relating to Consumer Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
LASER POINTING DEVICES

§ **-1 Definitions.** As used in this chapter, "laser pointing device" means any hand-held laser device, which is not designed as a sighting device for a weapon nor for use in a medical procedure. This term includes the commercially-available device, which is commonly known as a "laser pen" or "laser pointer".

§ **-2 Harrassment; prohibited.** No person eighteen years of age or over shall intentionally focus, point, or shine a laser pointing device directly or indirectly into the eye or eyes of another person, or upon another person or animal, in such a manner as would reasonably be expected to annoy, harass, or alarm the person or animal.

§ **-3 Sale to minors; prohibited.** It shall be unlawful to sell or furnish a laser pointing device to any minor.

§ **-4 Possession of laser pointing devices by minors prohibited.** It shall be unlawful for any minor to possess a laser pointing device.

§ **-5 Exemptions.** Sections -3, and -4 shall not apply to any hand-held laser devices used in a recreational activity commonly referred to as "laser tag," and which activity is offered for a fee by an amusement or recreation facility, provided that the devices shall be collected by the operator of the facility following their use.

§ **-6 Penalties.** (a) Any violation of section -2 is punishable by a fine of not less than $100 and not more than $500 or imprisonment for a definite term to be fixed by the court not to exceed thirty days, or both.

(b) Any violation of section -3, or -4 is punishable by a fine of not less than $100 and not more than $500."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 24, 1999.)

ACT 95 S.B. NO. 588

A Bill for an Act Relating to Sex Offenders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are at least five agencies that deal with criminal sex offenders, including:

(1) The department of public safety;
(2) The department of human services;
(3) The department of health;
(4) The judiciary; and
(5) The Hawaii paroling authority.

As sex offenders often enter multiple treatment, monitoring, and punishment programs, it is in the best interests of all involved that these agencies share offender treatment and psychiatric records. Allowing agencies to confidentially share offender treatment and psychiatric records would:

(1) Help each agency keep better track of an individual offender;
(2) Provide a measure of extra safety for all affected agency employees, such as, social workers, parole officers, and treatment providers; and
(3) Enhance public protection.

The purpose of this Act is to include as an interagency requirement the sharing of all relevant criminal, medical, psychological, or mental health records of criminal offenders that would usually be considered confidential.

SECTION 2. Section 353E-2, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§353E-2[]] Interagency coordination.** (a) To carry out their responsibilities under section 353E-1, the department of public safety, Hawaii paroling authority, judiciary, department of health, department of human services, and any other agency assigned sex offender oversight responsibilities by law or administrative order, shall establish, by an interagency cooperative agreement, a coordinating body to oversee the development and implementation of sex offender treatment programs in the State to ensure compliance with the intent of the master plan developed under section 353E-1(1). The interagency cooperative agreement shall set forth the role of the coordinating body and the responsibilities of each agency that is a party to the agreement.

(b) The department of public safety shall be the lead agency for the statewide sex offender treatment program. As the lead agency, the department shall act as facilitator of the coordinating body by providing administrative support to the coordinating body.

(c) Notwithstanding any other provision to the contrary, for purposes of sex offender treatment and community supervision, any agency that is part of the interagency cooperative agreement shall provide, upon the request of any other participating agency, all relevant criminal, parole, medical, psychological, or mental health records of any offender receiving supervision or treatment while under custody of the State. Records received by a participating agency under this section shall be confidential and shall be disclosed by the receiving agency only for the purposes and under the circumstances expressly authorized by this section. Any agency providing records under this section shall document the disclosures made under this section, including the name of the agency to which the record is disclosed, the title of the record disclosed, and the date of disclosure."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 24, 1999.)

ACT 96

S.B. NO. 628

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-191, Hawaii Revised Statutes, is amended to read as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

"'"Ballot issue committee" means a committee as defined in this section which has the exclusive purpose of making or accepting contributions or expenditures for or against any issue appearing on the ballot at the next applicable election."

2. By amending the definition of "committee" to read as follows:

"'"Committee" means:

(1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:
   (A) Candidate;
   (B) Individual who files for nomination at a later date and becomes a candidate; or
   (C) Party;

   with or without the authorization of the candidate, individual, or party. In addition, the term "committee" means any organization, association, or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election; or

(2) Any organization, association, or individual that raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any:
   (A) Candidate;
   (B) Individual who files for nomination at a later date and becomes a candidate; or
   (C) Party; and

   subsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party.[1]

[(3)] Notwithstanding any of the foregoing, the term "committee" shall not include any individual making a contribution or expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart[; or

(4) Any committee as defined in paragraph (1) that accepts or makes contributions or makes expenditures in aggregate of more than $1,000 in an election to influence the nomination and election of individuals to public office or the outcome of ballot questions or issues, shall register with the commission and file reports as required by this chapter.], or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising."

SECTION 2. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The duties of the commission under this subpart are:

(1) To develop and adopt reporting forms required by this subpart;

(2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
(3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
(4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
(5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of $50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of $50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;
(6) To hold public hearings;
(7) To investigate and hold hearings for receiving evidence of any violations;
(8) To adopt a code of fair campaign practices as a part of its rules;
(9) To establish rules pursuant to chapter 91;
(10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
(11) To administer and monitor the distribution of public funds under this subpart;
(12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
(13) To employ or contract, without regard to chapters 76 and 77 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
(14) To do random audits, field investigations, as necessary;
(15) To file for injunctive relief when indicated;
(16) To censure any candidate who fails to comply with the code of fair campaign practices; and
(17) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the

facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion."

SECTION 3. Section 11-194, Hawaii Revised Statutes, is amended to read as follows:

"**§11-194 Registration.** (a) Each candidate, committee, or party shall file an organizational report as set forth in section 11-196, or section 11-196.5 as applicable, within ten days from the date a candidate or candidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than $100, or, within ten days from the date a noncandidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than $1,000.

(b) Committees that form within ten days of an election and expend in the aggregate more than $1,000 shall register and fully disclose the expenditure by 4:30 p.m. on the last calendar day prior to the expenditure.

(c) Each candidate who [is certified to be a candidate by the] files nomination papers for office with the chief election officer or county clerk [by way of the "write-in" ballot] shall file an organizational report within five days of [being certified as a candidate.] filing.

[(d) Each candidate shall re-register for the new election period. A noncandidate committee need not re-register for a new election period, but shall affirm the accuracy of the information on the organizational report as set forth in section 11-196.5.]"

SECTION 4. Section 11-195, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All reports required to be filed under this subpart by a candidate or those committees directly associated with the candidate's candidacy shall be certified by the candidate[.] and treasurer. Reports required to be filed under this subpart by a party or committee that supports more than one candidate shall be certified by a person authorized to sign the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission."

SECTION 5. Section 11-199, Hawaii Revised Statutes, is amended to read as follows:

"**§11-199 Campaign contributions, generally.** (a) All monetary contributions shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the national credit union administration in the name of the candidate, committee, or party, whichever is applicable.

(b) Each candidate, committee, or party shall establish and maintain an itemized record showing [the]:[2]

(1) The amount of each monetary contribution[, the];

(2) The description and value of each nonmonetary contribution[,]; and [the]

(3) The name and address of each donor making a contribution of more than $25 in value.

[(c) Each candidate and campaign treasurer shall report the amount and date of deposit of each contribution and the name and address of each donor who makes a contribution whose aggregate value is more than $100.

(d)] (c) No candidate, committee, or party shall accept a contribution of more than $100 in cash from a single person without issuing a receipt to the donor and keeping a record of the transaction.

[(e)] (d) Each committee and party shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked."

SECTION 6. Section 11-204, Hawaii Revised Statutes, is amended to read as follows:

"**§11-204 Campaign contributions; limits as to persons.** (a) No person, other than a candidate for the candidate's own campaign, or any other entity shall make contributions to:

(1) A candidate seeking nomination or election to a two-year office or to the candidate's committee in an aggregate amount greater than $2,000 during an election period; [and]

(2) A candidate seeking nomination or election to a four-year statewide office or to the candidate's committee in an aggregate amount greater than $6,000 during an election period; and

(3) A candidate seeking nomination or election to a four-year nonstatewide office or to the candidate's committee in an aggregate amount greater than $4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business.

(b) No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than $1,000 in an election; except that in the case of a corporation or company using funds from its own treasury, there shall be no limit on contributions or expenditures to the corporation or company noncandidate committee.

(c) A [candidate] candidate's immediate family, in making [a contribution] contributions to the candidate's campaign, shall be exempt from the above limitation, but shall be limited in the aggregate to $50,000 in any election period. The aggregate amount of $50,000 shall include any loans made for campaign purposes to the candidate from the candidate's immediate family.

(d) A contribution by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution of the minor's parent or guardian.

(e) Any candidate [or], candidate's committee, or committee [who] that receives in the aggregate more than the applicable limits set forth in this section in any primary, initial special, special, or general election from a person, shall be required to transfer an amount equal to any excess over the limits established in this section to the Hawaii election campaign fund within thirty days of receipt [by a candidate or candidate's committee,] of the contribution, and in any event, no later than thirty days upon the receipt by a candidate, [or] candidate's committee, or committee, of notification from the commission. A candidate [or], candidate's committee, or committee who complies with this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228.

(f) All payments made by a person whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, or any other person, or by any group of those persons shall be considered to be made by a single person.

(g) A contribution made by two or more corporations shall be treated as one person when such corporations:

(1) Share the majority of members of their boards of directors;

(2) Share two or more corporate officers;

(3) Are owned or controlled by the same majority shareholder or shareholders; or

(4) Are in a parent-subsidiary relationship.

(h) An individual and any general partnership in which the individual is a partner, or an individual and any corporation in which the individual owns a controlling interest, shall be treated as one person.

(i) No committee which supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

(j) [No contributions may be made to a noncandidate committee from a corporation or other organization unless the noncandidate committee has been in existence continuously, as shown on the records of the campaign spending commission, for at least twelve months prior to the next primary election.

(k)] No contributions or expenditures shall be made to or on behalf of a candidate or committee by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations 110.4(a) and 110.9(a), as amended. No foreign-owned domestic corporation shall make contributions where:

(1) Foreign national individuals participate in election-related activities such as decisions concerning the making of contributions or the administration of a political committee; or

(2) The contribution funds are not domestically-derived.

[(l)] (k) No person or any other entity shall make contributions to a political party in an aggregate amount greater than $50,000 in any two-year election period.

(l) Except for subsection (j), this section shall not apply to ballot issue committees. ''

SECTION 7. Section 11-212, Hawaii Revised Statutes, is amended to read as follows:

"**§11-212 Preliminary reports.** (a) [Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a candidate committee,] The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office[,]. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the [twenty-fifth and tenth] following dates:

(1) July thirtieth of the year of the primary election;

(2) Ten calendar [day] days prior to each primary and initial special election[,]; and [the tenth]

(3) Ten calendar [day] days prior to a special or general election.

Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of [a] other preliminary [report:] reports:

(1) The aggregate sum of all contributions and other campaign receipts received;

(2) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than $100 during an election period, which has not previously been reported;

(3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of $1,000 or more during an election period, which has not previously been reported;

(4) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and

(5) A current statement of the balance on hand or deficit.

(b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

(1) The aggregate sum of all contributions and other campaign receipts received;

(2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of $100 or more during an election period, which has not previously been reported;

(3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;

(4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and

(5) A current statement of the balance on hand.

(c) A candidate, party, or committee whose aggregate contributions [or] and aggregate expenditures for the reporting period each total $2,000 or less may file a short form report with the commission or appropriate county clerk's office in lieu of the reports required by this section and section 11-213.

(d) Notwithstanding this section and section 11-213, a candidate, party, or committee whose aggregate contributions [or] and aggregate expenditures for the election period total $1,000 or less, need not file a preliminary and final primary report, a preliminary and final general report, or a special election report, but shall file only a final election period report."

SECTION 8. Section 11-213, Hawaii Revised Statutes, is amended to read as follows:

"**§11-213 Final and supplemental reports.** (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m.

on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

(1) A statement of the total contributions and campaign receipts received;

(2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than $100 during an election period, which has not previously been reported;

(3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of $1,000 or more during an election period, which has not previously been reported;

(4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and

(5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

(1) A statement of the total contributions and campaign receipts received;

(2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than $100 during an election, which has not previously been reported;

(3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;

(4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and

(5) A current statement of the balance on hand.

(c) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period general report with the commission on forms provided by the commission no later than 4:30 p.m. on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.

(d) Termination. A candidate, party, or committee may terminate registration with the commission with no surplus or no deficit. A termination report approved by the commission shall include information on the disposition of any funds, which has not previously been reported.

(e) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than 4:30 p.m. on the thirtieth day after the last day of the election year.

(f) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

(1) Maintain the cash surplus in a financial depository; and

(2) Every six months, until the candidate files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than 4:30 p.m. on the thirtieth calendar day after the last day of the election year.

[(g) Short form reporting. A candidate, party, or committee who receives no contributions, makes no expenditures, and has a deficit or surplus of $2,000 or less in any prescribed reporting period shall nevertheless file preliminary, final, and supplemental reports on the respective dates pursuant to this subpart. The reports may be filed on a short form as provided by the commission.

(h)] (g) All supplemental reports required by this section shall be filed until a candidate files to be on the ballot with the state elections office. Each party or noncandidate committee shall file a supplemental report for the respective reporting period during a nonelection year. In an election year, each party and noncandidate committee shall file reports as prescribed in this section and section 11-212 for the primary and general election."

SECTION 9. Section 11-215, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) [To the extent authorized by law, all] All advertisements [authorized by a candidate or a candidate's committee] shall contain the name and address of the candidate, committee, [or] party, or person paying for the advertisement. If an advertisement is not authorized by a candidate or a candidate's committee, the advertisement shall contain the name and address of the person paying for the advertisement.

(b) In addition to subsection (a), [and to the extent authorized by law,] no [person] candidate or committee shall cause or submit any advertisement in support of a candidate [or], against a candidate's opponent, or with regard to a ballot issue to be published, broadcast, televised, or otherwise circulated and distributed except under the following conditions:

(1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by a candidate [or], committee directly associated with a candidate, or ballot issue committee, the notice of approval and authority need not be included; or

(2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate."

SECTION 10. Section 11-228, Hawaii Revised Statutes, is amended to read as follows:

"**§11-228 Administrative fines; relief.** (a) In the performance of its required duties, the commission may render a decision or issue an order affecting any person violating any provision of this subpart [other than in sections 11-193(a)(5) and 11-215,] that shall provide for the assessment of an administrative fine in the manner prescribed as follows:

(1) If a natural person, an amount not to exceed $1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater; or
(2) If a corporation, organization, association, or labor union, it shall be punished by a fine not exceeding $1,000 for each occurrence; and
(3) Whenever a corporation, organization, association, or labor union violates this subpart, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any order for the assessment of an administrative fine may not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent. If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.

(c) If an order issued by the commission is not complied with by the person to whom it is directed, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.

(d) Any administrative fine collected by the commission shall be deposited in the Hawaii election campaign fund.

(e) Any person or the commission may sue for injunctive relief to compel compliance with this subpart.

(f) The provisions of this section shall not be construed to prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-229.

(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and 11-215(b)(3)."

SECTION 11. Section 11-229, Hawaii Revised Statutes, is amended to read as follows:

"**§11-229 Criminal prosecution.** (a) Any [individual] person who knowingly, intentionally, or recklessly violates any provision of this subpart[, other than sections 11-193(a)(5) and 11-215,] shall be guilty of a misdemeanor. A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(b) For purposes of prosecution for violation of this subpart, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

(1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;
(2) In the case of state offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and
(3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether there will be any conflicting interest between the agency and its appointive authority.

(c) The court shall give priority to the expeditious processing of suits under this section.

(d) Prosecution for violation of any provision of this subpart shall not be commenced after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and 11-215(b)(3).''

SECTION 12. Act 27, Special Session Laws of Hawaii 1995, as amended by Act 13, Session Laws of Hawaii 1996, is amended by amending section 15 to read as follows:

''SECTION 15. This Act shall take effect on July 1, 1995[;] provided that on June 30, 1999, this Act shall be repealed and sections 11-1, 11-2, 11-5, [11-191, 11-194, 11-195, 11-216,] 12-8, and 26-1, Hawaii Revised Statutes,[2] shall be reenacted in the form in which they read on the day before the effective date of this Act.''

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect on June 29, 1999.

(Approved June 24, 1999.)

Notes

1. Prior to amendment ";" appeared here.
2. Colon should be underscored.
3. Comma should not be underscored.

ACT 97

S.B. NO. 779

A Bill for an Act Relating to Dental Hygienists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 447, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

''**§447- Educational requirements for intra-oral block anesthesia.** (a) The applicant for certification to administer intra-oral block anesthesia shall show proof that the applicant successfully completed a course of study that shall include the following categories of intra-oral infiltration local anesthesia and intra-oral block anesthesia:

(1) Maxillary mandibular infiltration anesthesia;
(2) Long buccal nerve block anesthesia;
(3) Mental nerve block;
(4) Inferior alveolar/lingual nerve block;
(5) Incisive nerve block;
(6) Posterior superior alveolar nerve block;
(7) Middle superior alveolar nerve block;
(8) Anterior superior alveolar nerve block;
(9) Nasopalatine (incisive canal) nerve block; and

(10) Greater (anterior) palatine nerve block.

(b) A course of study shall also include didactic studies and clinical experience, and for intra-oral block anesthesia categories in subsection (a)(1) to (10), at least thirty-nine hours, and a minimum of fifty successful injections of which ten shall be in intra-oral block in subsection (a)(4) and five in intra-oral block in subsection (a)(6).

(c) The curriculum of the course of study shall include as follows:

(1) Cardiopulmonary resuscitation certification;
(2) Medical history evaluation procedures;
(3) Physical evaluation procedures;
(4) Anatomy of head, neck, and oral cavity as it relates to administering local anesthetic agents;
(5) Pharmacology of local anesthetics and vasoconstrictors;
(6) Indications and contraindications for administration of local anesthetics;
(7) Prevention, diagnosis, and management of medical emergency;
(8) Recognition and management of post-injection complications and management of reactions to injections;
(9) Medical and legal management complications;
(10) Selection and preparation of the armamenteria and recordkeeping for administering various local anesthetics;
(11) Methods of administering local anesthetics with emphasis on technique, which includes aspiration and slow injection, in addition to minimum effective dosage; and
(12) Proper infection control techniques with regard to local anesthesia and the proper disposal of sharps.

(d) As part of the course of study, the applicant or licensed dental hygienist shall be required to pass an examination to determine if the applicant or licensed dental hygienist has acquired the necessary knowledge and clinical proficiency to administer intra-oral block anesthesia.

(e) The board of dental examiners may adopt rules pursuant to chapter 91, relating to the education and certification of dental hygienists to administer intra-oral block anesthesia."

SECTION 2. Chapter 448, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§448- Continuing education requirements.** The board shall adopt a program of continuing education for dentists and a program of continuing education for dental hygienists. After January 1, 2002, at the time of reregistration of license as a dentist or dental hygienist, each licensee shall present to the board evidence of compliance with the program of continuing education applicable to their profession. Failure to reregister and present evidence of compliance shall constitute a forfeiture of license, which may be restored only upon written application therefor and payment to the board of a restoration fee."

SECTION 3. Section 447-1, Hawaii Revised Statutes, is amended to read as follows:

"**§447-1 Who may become dental hygienists; fees.** (a) Any person:

(1) Eighteen years of age or over;
(2) Holding and having a diploma or proper certificate of graduation from a dental hygiene school accredited by the American Dental Association

(A.D.A.) Commission on Dental Accreditation requiring at least a two year course, recognized by the board of dental examiners; and

(3) Having been officially certified in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board;

upon written application made to and filed with the board at least sixty days prior to the date selected by the board for the examination, may be examined by the board for qualification as a dental hygienist.

The application for examination shall be accompanied by the applicant's certificate of graduation from an accredited dental hygiene school together with documentary proof of the applicant's certification in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia. At the time of filing the application, the applicant shall pay to the board application and examination fees, which fees, together with all other fees or charges in this chapter, shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be deposited to the credit of the compliance resolution fund established pursuant to section 26-9(o).

(b) Two examinations shall be held in each year at the time the board designates. The examinations shall cover subjects considered essential by the board for a dental hygienist and shall likewise include a practical examination on the removal of deposits or stains from the surfaces of the teeth. The board shall furnish a chair and engine, but the applicant shall supply all necessary instruments, materials, and patients for the examination.

(c) If the applicant successfully passes the examination, the applicant shall be [registered and receive a certificate of ability] licensed to practice as a dental hygienist in the State. Every [registered] licensed dental hygienist, before entering practice, shall pay the board a [registration] license fee. On or before December 31 of each odd-numbered year, every [registered] licensed dental hygienist desiring to begin or continue to practice in the State shall pay to the board a fee for the biennial [registration] licensure thereof. The failure, neglect, or refusal of any duly licensed dental hygienist to pay the biennial [registration] licensure fee shall constitute a forfeiture of the license, but the license may be restored upon written application therefor and payment to the board of a restoration fee.

(d) An applicant's or licensed dental hygienist's competence to administer intra-oral infiltration local anesthesia shall be demonstrated by certification in the administration of intra-oral infiltration local anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board. In addition, an applicant's or licensed dental hygienist's competence to administer intra-oral block anesthesia shall be demonstrated by proof of successful completion of a course of study in accordance with standards provided for in this chapter, and the issuance of a certificate or other program documentation listing the intra-oral block anesthesia categories in which the applicant or licensed dental hygienist has acquired knowledge and proficiency.

The applicant or licensed dental hygienist shall also submit documentation of the course content when submitting the certificate. The board shall certify that the applicant or licensed dental hygienist has met the requirements of this chapter; provided that the licensed dental hygienist's administration of intra-oral block anesthesia shall be under the direct supervision of a licensed dentist and shall be for those categories of intra-oral block anesthesia listed on the course of study certificate submitted to the board.

[(d)] (e) No person shall practice dental hygiene, either gratuitously or for pay, or shall offer or attempt so to practice, or shall advertise or announce publicly or privately as being prepared or qualified so to practice, without having a license as in

this section provided, nor shall any licensed dental hygienist practice except under the supervision of a licensed dentist as in this chapter provided."

SECTION 4. Section 447-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Clinical dental hygiene may be practiced by a licensed dental hygienist. The practice of clinical dental hygiene is defined as the removal of hard and soft deposits and stains from the portion of the crown and root surfaces to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, the application of preventive chemical agents to the coronal surfaces of teeth, which chemical agents have been approved by the board of dental examiners, and the use of mouth washes as are approved by the board, but shall not include the performing of any repair work or the preparation thereof, or any other operation on the teeth or tissues of the mouth; provided that nothing herein shall prohibit a dental hygienist from using or applying topically any chemical agent which has been approved in writing by the department of health for any of the purposes set forth in part V of chapter 321, and other procedures delegated by [the] a dentist in accordance with the rules of the board of dental examiners.

In addition, a licensed dental hygienist may administer intra-oral infiltration local anesthesia and intra-oral block anesthesia under the direct supervision of a dentist [upon providing documentary proof satisfactory to the board of certification in the administration of these procedures.] after being certified by the board, and for those categories of intra-oral infiltration local anesthesia and intra-oral block anesthesia for which the licensed dental hygienist has been certified through a course of study meeting the requirements of this chapter."

SECTION 5. If any provision of this Act, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect upon its approval.

(Approved June 24, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 98 S.B. NO. 816

A Bill for an Act Relating to the Convention Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature recognizes that the primary intent behind the development of the convention center was to bring new and additional outside money into the state economy. Since the development of the convention center was financed by the sale of bonds that would be repaid by the transient accommodations tax, it is the State's policy to link the use of the convention center facility with hotel room bookings. Therefore, the legislature finds that it is appropriate for the convention center authority to give first priority booking at the convention center to out-of-

state bookings that would generate new tourism revenues for the State by attracting new business and nonresident spending.

The legislature further finds that the convention center authority should give second priority booking at the convention center to smaller corporate meetings, special events, trade and consumer shows, entertainment, and other local events open to the public, provided that it does not interfere with the booking of out-of-state functions and that the preferred booking for local events that do not generate new revenues for the State be booked at other local venues such as the Neal Blaisdell Center or hotels. Traffic and noise impacts to the community arising from the booking of local events at the convention center should also be considered.

The legislature believes that the effectiveness of the convention center is to be determined by its ability to generate new tourism revenues for the State and not its ability to generate revenues to support its operations.

The purpose of this Act is to, among other things:

(1) Extend the sunset date of the convention center authority (CCA) from June 30, 1999, to June 30, 2000;
(2) Combine the convention center capital special fund with the convention center operations special fund;
(3) Appropriate moneys from this consolidated special fund to CCA;
(4) Specify that reimbursement of the general fund for debt service on general obligation bonds or reimbursable general obligation bonds for the Hawaii convention center be in accordance with a schedule determined by the director of finance, with the approval of the governor, in the best interest of the State; and
(5) Authorize CCA to waive or substantially discount any payment of the convention center for a specific event whenever CCA determines that the waiver or discount is in the best interest of the convention center facility or the State by attracting new tourist markets or conventioneers.

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

(1) Special summer school and intersession fund under section 302A-1310;
(2) School cafeteria special funds of the department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital and operations special fund under section 206X-10.5 [and the convention center operations special fund under section 206X-10.6];
(6) Special funds established by section 206E-6;
(7) Housing loan program revenue bond special fund;
(8) Housing project bond special fund;
(9) Aloha Tower fund created by section 206J-17;
(10) Domestic violence prevention special fund under section 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;
(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;

(16) Hawaii health systems corporation special funds;
(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section [[]201B-11[]]; and
(19) Department of commerce and consumer affairs' special funds;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:
(1) Transportation use special fund established by section 261D-1;
(2) Special summer school and intersession fund under section 302A-1310;
(3) School cafeteria special funds of the department of education;
(4) Special funds of the University of Hawaii;
(5) State educational facilities improvement special fund;
(6) Special funds established by section 206E-6;
(7) Aloha Tower fund created by section 206J-17;
(8) Domestic violence prevention special fund under section 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;
(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital and operations special fund established under section 206X-10.5 [and the convention center operations special fund established under section 206X-10.6];
(15) Hawaii health systems corporation special funds; and
(16) Tourism special fund established under section [[]201B-11[]];

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 206X-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise limited by this chapter, the authority also may:
(1) Sue and be sued;
(2) Have a seal and alter the same at pleasure;
(3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
(4) Make and alter bylaws for its organization and internal management;
(5) Adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;

(6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;

(7) Review and approve the convention center development plan proposed by a developer, for the convention center district; inspect and approve development within the convention center district for compliance with convention center development plans and rules; and upon construction of the convention center facility, manage, operate, and maintain or enter into contracts for the professional management, operation, and maintenance of the convention center facility;

(8) Cause a developer to prepare plans, specifications, and designs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time, to modify such plans, specifications, or designs; provided that the plans, specifications, or designs shall be subject to review and approval by the authority;

(9) Procure insurance against any loss and any liability in connection with the convention center and other related assets and operations in such amounts and from such insurers as it deems desirable;

(10) Contract for and accept gifts or grants in any form from any public agency, or any other source;

(11) Upon the request of the authority and the approval of the governor, condemn any real property interests as the authority deems necessary for the development of a convention center pursuant to chapter 101; provided that the valuation of any such property acquired pursuant to the exercise of the authority's power under this subsection shall be done without regard to any increase or decrease in the value of the property resulting from the application of this chapter. Property acquired by condemnation shall not be subject to chapter 171;

(12) Negotiate with the developer for contribution by the developer to defray costs relating to the relocation of persons displaced because of the development;

(13) On behalf of the State, accept the authority to operate, manage, and maintain the convention center facility upon completion or acquisition of such facility;

(14) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the authority and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;

(15) Pledge or assign all or any part of the receipts and revenues of the authority;

(16) Set and collect rents, fees, charges, or other payments for the lease, use, occupancy, or disposition of the convention center facility acquired, constructed, or reconstructed by the authority pursuant to this chapter; provided that the authority may waive or substantially discount any rent, fee, charge, or other payment at an open public meeting subject to the requirement of chapter 92 for a specific event whenever the authority determines that the waiver or discount is in the best interest of the convention center facility or the State by attracting new tourist markets or conventioneers;

(17) Acquire, lease as lessee or lessor, own, rent, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter;

(18) Acquire by purchase, lease, or otherwise, and develop, construct, operate, own, manage, repair, reconstruct, enlarge, or otherwise effectuate, either directly or through developers, a convention center;

(19) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of the convention center[;] in accordance with a schedule determined by the director of finance, with the approval of the governor, as may be in the best interest of the State;

(20) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter; and

(21) By itself, or in combination or association with qualified persons, by any form of request for proposals, as determined by the authority, any law to the contrary notwithstanding, solicit, accept, review, reject, modify, or approve proposals, and thereafter enter into agreements, for a convention center development plan, and for the initiation, undertaking, supervision and regulation of the design, development, financing, operation and maintenance of a convention center facility and any related developments."

SECTION 5. Section 206X-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) As a further condition and consideration of the right to develop the real property within the convention center district under the agreement and pursuant to this chapter, the developer shall pay a reasonable sum determined by the authority as contribution for the payment of costs relating to:

(1) The temporary or permanent relocation of existing licensees and lessees, if any, who are displaced because of the development within the convention center district pursuant to the convention center development plan by the developer; or

(2) Settlement payments in lieu of payments provided under paragraph (1) to existing licensees and lessees, if any, who are displaced by the developer because of the development within the convention center district pursuant to the convention center development plan;

provided that each displaced licensee or lessee shall have the option to select either relocation or a settlement payment.

Upon the approval by the authority of the relocation plan, which shall be prepared and submitted by the developer to the authority, the developer shall deliver to the authority for deposit into the convention center capital and operations special fund the sum determined by the authority in the form of a certified check, an irrevocable letter of credit, or surety bond. The sum determined by the authority shall be used for the implementation of the relocation plan; provided that the sum and all interest accrued thereon shall be refunded to the developer in the event this chapter expires and becomes void.

The relocation plan shall include an agreement by the developer to give every displaced licensee or lessee who does not elect to receive a settlement payment under paragraph (2) an unassignable right of first refusal of any license or lease of space within the convention center district developed and offered for those activities similar in size and nature to the business conducted by the licensee or lessee at the time of displacement, unless this right is waived by any licensee or lessee.

The authority shall establish a task force to assist in the implementation of the relocation plan. The task force shall include persons representing agencies, organizations, government, and private interests."

SECTION 6. Section 206X-10.5, Hawaii Revised Statutes, is amended to read as follows:

"**§206X-10.5 Convention center capital and operations special fund.** (a) There is established in the state treasury the convention center capital and operations special fund, into which shall be deposited:

(1) A portion of the revenues from the transient accommodations tax, as provided by section 237D-6.5;

(2) All proceeds from revenue bonds issued by the authority; [and]

(3) Appropriations by the legislature [to the convention center capital special fund.];

(4) All net revenues or moneys derived from the operations or use of the convention center;

(5) All or a portion of all net revenues derived from the operation of parking and garage facilities and other concessions at the convention center; and

(6) All or a portion of all net revenues derived from the food and beverage operations at the convention center facility.

(b) In addition to the powers of the authority specified in section 206X-4, the authority may [do]:

(1) Adopt rules in accordance with chapter 91, to define the term "net revenues or moneys derived from the operations or use of the convention center"; and

(2) Do any and all things deemed necessary to administer the convention center capital and operations special fund.

(c) Moneys in the convention center capital and operations special fund may be placed in interest-bearing accounts or otherwise invested by the authority until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the convention center capital and operations special fund.

(d) Moneys in the convention center capital and operations special fund shall be used by the authority for the following purposes:

(1) Planning, design, improvement, construction, land acquisition, equipment, and furnishing necessary for the development or maintenance of a convention center;

(2) Constructing the convention center and any public facilities related thereto;

(3) Payment of debt service on revenue bonds issued by the authority for purposes of the convention center, establishment of debt service and other reserves deemed necessary by the authority or the State, and reimbursement of the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of the convention center; [and]

(4) Operation, maintenance, and improvement of the convention center and any public facilities related thereto; and

[(4)] (5) Any other purpose deemed necessary by the authority for the purpose of planning, improving, and developing the convention center facility."

SECTION 7. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [For the fiscal year beginning July 1, 1994, and for each fiscal year thereafter, until December 31, 1998, revenues collected under this chapter shall be distributed as follows:

(1) One-sixth of the revenues collected under this chapter shall be deposited into the convention center capital special fund established under section 206X-10.5;
(2) Of the remaining revenues, five per cent shall be retained by the State; and
(3) Of the remainder, Kauai county shall receive 14.5 per cent; Hawaii county shall receive 18.6 per cent; city and county of Honolulu shall receive 44.1 per cent; and Maui county shall receive 22.8 per cent.]

Beginning on January 1, 1999[1] revenues collected under this chapter shall be distributed as follows:

(1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center capital and operations special fund established under section 206X-10.5;
(2) 37.9 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11;
(3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent[;], Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection, and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection."

SECTION 8. Section 206X-10.6, Hawaii Revised Statutes, is repealed.

SECTION 9. Act 96, Session Laws of Hawaii 1988, as amended by Act 159, Session Laws of Hawaii 1992, Act 241, Session Laws of Hawaii 1993, Act 75, Session Laws of Hawaii 1994, and Act 156, Session Laws of Hawaii 1998, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall automatically expire on June 30, [1999.] 2000. The auditor shall continue to audit and monitor the progress made by the convention center authority in resolving various outstanding issues and problems so as to assure the legislature that these issues have been addressed on or before June 30, 2000. By February 28, 2000, the auditor shall submit a management audit report to the legislature on the effectiveness of the steps taken by the convention center authority to resolve traffic, noise, and other outstanding claims against the authority. The management audit may include financial audit issues that the auditor deems appropriate.

In the event any judicial or quasi-judicial proceeding is commenced regarding the validity of this Act or any section of this Act, or any action of the authority, the running of the period shall be suspended until a final nonappealable determination is made in the judicial or quasi-judicial proceeding."

SECTION 10. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the convention center operations special fund as of the close of business on June 29, 1999, to the credit of the convention center capital and operations special fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 11. There is appropriated out of the convention center capital and operations special fund the sum of $402,000 or so much thereof as may be necessary for fiscal year 1999-2000 and the same sum or so much thereof as may be necessary

for fiscal year 2000-2001 for the general and administrative expenses of the convention center authority.

The sums appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 13. This Act shall take effect on June 29, 1999; provided that:

(1) Section 8 shall take effect on June 30, 1999;
(2) Section 11 shall take effect on July 1, 1999;
(3) The amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act shall not be repealed when those sections are reenacted on July 1, 2000, pursuant to section 13 of Act 216, Session Laws of Hawaii 1997; and
(4) The amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 24, 1999.)

Notes

1. Prior to amendment ", " appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 99 S.B. NO. 830

A Bill for an Act Relating to Health Insurance Reimbursement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to establish minimum reimbursement requirements for health care insurance and to establish contested claims procedures.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 13 to be appropriately designated and to read as follows:

"**§431:13- Reimbursement for health insurance benefits.** (a) This section applies to accident and sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article 1 of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.

(b) Unless shorter payment timeframes are otherwise specified in a contract, an entity shall reimburse a claim that is not contested or denied not more than thirty calendar days after receiving the claim filed in writing, or fifteen calendar days after receiving the claim filed electronically, as appropriate.

(c) If a claim is contested or denied or requires more time for review by an entity, the entity shall notify the health care provider in writing or electronically not more than fifteen calendar days after receiving a claim filed in writing, or not more than seven calendar days after receiving a claim filed electronically, as appropriate. The notice shall identify the contested portion of the claim and the specific reason for contesting or denying the claim, and may request additional information.

(d) If information received pursuant to a request for additional information is satisfactory to warrant paying the claim, the claim shall be paid not more than thirty

calendar days after receiving the additional information in writing, or not more than seven calendar days after receiving the additional information filed electronically, as appropriate.

(e) Payment of a claim under this section shall be effective upon the date of the postmark of the mailing of the payment, or the date of the electronic transfer of the payment, as applicable.

(f) Notwithstanding section 478-2 to the contrary, interest shall be allowed at a rate of fifteen per cent a year for money owed by an entity on payment of a claim exceeding the applicable time limitations under this section, as follows:

(1) For an uncontested claim:
   (A) Filed in writing, interest from the first calendar day after the thirty-day period in subsection (b); or
   (B) Filed electronically, interest from the first calendar day after the fifteen-day period in subsection (b);

(2) For a contested claim filed in writing:
   (A) For which notice was provided under subsection (c), interest from the first calendar day thirty days after the date the additional information is received; or
   (B) For which notice was not provided within the time specified under subsection (c), interest from the first calendar day after the claim is received;

or

(3) For a contested claim filed electronically:
   (A) For which notice was provided under subsection (c), interest from the first calendar day fifteen days after the additional information is received; or
   (B) For which notice was not provided within the time specified under subsection (c), interest from the first calendar date after the claim is received.

The commissioner may suspend the accrual of interest if the commissioner determines that the entity's failure to pay a claim within the applicable time limitations was the result of a major disaster or of an unanticipated major computer system failure.

(g) Any interest that accrues on delayed clean claims in this section shall be automatically added by the entity to the amount of the unpaid claim due the provider.

(h) In determining the penalties under section 431:13-201 for a violation of this section, the commissioner shall consider:

(1) The appropriateness of the penalty in relation to the financial resources and good faith of the entity;
(2) The gravity of the violation;
(3) The history of the entity for previous similar violations;
(4) The economic benefit to be derived by the entity and the economic impact upon the health care facility or health care provider resulting from the violation; and
(5) Any other relevant factors bearing upon the violation.

(i) As used in this section:

"Claim" means any claim, bill, or request for payment for all or any portion of health care services provided by a health care provider of services submitted by an individual or pursuant to a contract or agreement with an entity.

"Contest", "contesting", or "contested" means the circumstances under which an entity was not provided with, or did not have reasonable access to, sufficient information needed to determine payment liability or basis for payment of the claim.

"Deny", "denying", or "denied" means the assertion by an entity that it has no liability to pay a claim based upon eligibility of the patient, coverage of a service, medical necessity of a service, liability of another payer, or other grounds.

"Entity" means accident and sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article I of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.

"Health care facility" shall have the same meaning as in section 327D-2.

"Health care provider" means a Hawaii health care facility, physician, nurse, or any other provider of health care services covered by an entity."

SECTION 3. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

(1) Indebtedness [which] that is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980; [or]

(2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, [agreement of sale] "agreement of sale" includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation; [or]

(3) Indebtedness [which] that is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property [which] that is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction; [or]

(4) [Any transaction] Transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by chapter 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller's right to charge interest under section 478-2[.]; or

(5) Payment of any claim under section 431:13- ."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect on July 1, 2000, and shall be repealed on July 1, 2002; provided that section 478-8(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2000.

(Approved June 24, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 100

S.B. NO. 1518

A Bill for an Act Relating to Government Operations.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 88-107, Hawaii Revised Statutes, is amended to read as follows:

"**§88-107 Interest.** (a) The board of trustees shall annually allocate the interest and other earnings of the system to the funds of the system, as follows:

(1) The annuity savings fund shall be credited with the amount of regular interest credited to members' accounts;
(2) The expense fund shall be credited with such sums as provided in section 88-116; and
(3) The remaining investment earnings, if any, shall be credited to the pension accumulation fund.

(b) Beginning with actual investment earnings in fiscal year 1995 in excess of the investment yield rate, to address outstanding unfunded pension obligations, ten per cent of such excess earnings shall be deposited in the pension accumulation fund; remaining excess earnings shall be applied to the amounts to be contributed under section 88-123. In fiscal year 1996, twenty per cent of the actual investment earnings in excess of the investment yield rate shall be deposited in the pension accumulation fund; remaining excess earnings shall be applied to the amount contributed under section 88-123. In fiscal years 1997 and 1998, actuarial investment earnings in excess of a ten per cent actuarial investment yield rate shall be applied to the amount contributed under section 88-123. Beginning in fiscal year [1997,] 1999, one hundred per cent of the investment earnings shall be deposited in the pension accumulation fund.

(c) The application of actuarial investment earnings to the amount contributed under section 88-123 for fiscal years 1997 and 1998 as provided in subsection (b) is a one-time only provision and no law shall be enacted to again require the employees' retirement system to apply actuarial investment earnings to offset the amount contributed under section 88-123."

SECTION 2. Section 89-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, the number of incremental and longevity steps and movement between steps within the salary range, the amounts of contributions by the State and respective counties to the Hawaii public employees health fund to the extent allowed in subsection (e), and other terms and

conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession[.]; provided that the parties may not negotiate with respect to cost items as defined by section 89-2 for the biennium 1999 to 2001, and the cost items of employees in bargaining units under section 89-6 in effect on June 30, 1999, shall remain in effect until July 1, 2001."

SECTION 3. The savings realized by the State and the counties under this Part shall be utilized for the purpose of funding retroactive cost items for HGEA and UPW contracts expiring on or before June 30, 1999, and which have been approved under section 89-10(b), Hawaii Revised Statutes, and other necessary items.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sums of:

	1998-1999	1999-2000	2000-2001
City & County of Honolulu	-0-	~~11,059,400~~	~~11,059,400~~
Hawaii County	-0-	~~2,065,600~~	~~2,065,600~~
Maui County	~~2,133,499~~	~~2,701,400~~	~~2,701,400~~
Kauai County	~~154,500~~	~~858,900~~	~~858,900~~[1]

SECTION 5. The sums appropriated shall be expended by the respective counties for the purposes of this Act.

PART II

SECTION 6. The legislature finds that our state departments and agencies should constantly be working towards improving the effectiveness and efficiency of our government. Improving government operations through strategic planning can result in increased and more effective government programs and improved coordination among different agencies and levels of government, and optimal use of state funds and personnel.

The legislature believes that the development of goals and objectives is essential for state departments and agencies to determine priorities, guide their decisions, and measure the effectiveness of their programs and services. Moreover, goals and objectives would assist the legislature in evaluating the budgetary needs of departments and agencies.

The legislature further finds that many of our State's departments and agencies have not formally established goals and objectives. Accordingly, the purpose of this Act is to require all departments and agencies to identify their goals, objectives, and policies, to provide a basis for determining priorities and allocating limited public funds and human resources.

SECTION 7. Every department and agency of the State shall develop and submit to the legislature twenty days prior to the start of the regular session of 2000 and each regular session thereafter, an annual report addressing the following:

(1) A statement of goals, including what the department or agency hopes to accomplish both short and long term;
(2) Objectives and policies, specifically setting forth how each goal can and will be accomplished;
(3) An action plan with a timetable indicating how the established objectives and policies will be implemented in one, two, and five years; and

(4) The process that the department or agency will use to measure the performance of its programs and services in meeting the stated goals, objectives, and policies.

PART III

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. This Act shall take effect on June 30, 1999; provided that sections 4 and 5 shall take effect on July 1, 1999; and provided further that upon approval of this Act, section 1 shall take effect retroactive to July 1, 1996.

(Approved June 24, 1999.)

Note

1. Item vetoed and initialed "BJC".

ACT 101 H.B. NO. 160

A Bill for an Act Relating to State and County Immunity from Liability.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 190, Session Laws of Hawaii 1996, is amended by amending section 3 to read as follows:

"SECTION 3. There is established the task force on beach and water safety which shall be administratively attached to the department of land and natural resources. The task force shall provide consultation to the chairperson of the board of land and natural resources regarding the design and placement of warning signs, devices, or systems at public beach parks including any comprehensive plan submitted by the State or county operating a public beach park to the chairperson of the board of land and natural resources for approval. The task force shall consist of the following members, who shall serve without compensation:

(1) The chairperson of the board of land and natural resources, or a designated representative;
(2) The director of business, economic development, and tourism, or a designated representative;
(3) The chairperson of the department of oceanography at the University of Hawaii at Manoa, or a designated representative; and
(4) Four persons appointed by the governor, each of whom shall be publicly employed water safety personnel; provided that the governor shall appoint one person from each of the respective counties.

The chairperson of the board of land and natural resources shall serve as chairperson of the task force. The task force shall submit a report of its recommendations to the legislature and the governor no later than twenty days prior to the convening of [the 1997, 1998, and 1999] <u>each</u> Regular Session."

SECTION 2. Act 190, Session Laws of Hawaii 1996, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect on July 1, 1996; provided that this Act shall be repealed on June 30, [1999.] <u>2003.</u>"

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)

ACT 102 H.B. NO. 248

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304-4.3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§304-4.3[]] University attorneys.** (a) The board of regents may appoint or retain by contract one or more attorneys who are independent of the attorney general, to provide legal services for the university, including:

(1) Representation for the university in civil actions to which the university is a party, either directly or through the acts or omissions of its officers or employees;
(2) Advice and assistance to ensure the lawful and efficient administration and operation of the university;
(3) Review and approval of documents relating to the acquisition of land or interest in land by the university; and
(4) Other legal service specified by the board of regents.

The board of regents may fix the compensation of the attorneys appointed pursuant to this section. Attorneys appointed or retained by contract shall be exempt from chapters 76, 77, and 89.

(b) Nothing in this section precludes the board of regents from requesting and securing legal services from the attorney general and the department of the attorney general, for the university, for the board of regents or its members, or for the university's officers and employees, upon mutual agreement."

SECTION 2. Section 304-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The [university shall be represented by attorneys appointed or hired by the board of regents pursuant to section 304-4.3, and the] board of regents, upon the advice of its [attorneys,] attorney, may arbitrate, compromise, or settle any claim, action, or suit brought against the university pursuant to this section. Any claim compromised or settled under this subsection shall be payable solely from the moneys and property of the university and shall not constitute a general obligation of the State, or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State, or by any revenue or taxes of the State. Nothing in this subsection precludes the board of regents from requesting and securing legislative appropriations to fund the settlement of any such claim or judgment against the university, its regents, officers, employees, or agents."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

ACT 103

H.B. NO. 314

A Bill for an Act Relating to the State Aquarium.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 184, Session Laws of Hawaii 1995, as amended by Act 187, Session Laws of Hawaii 1997, is amended by amending section 6 to read as follows:

"SECTION 6. **State aquarium transition.** (a) Notwithstanding any other law to the contrary, the current management arrangements with the research corporation of the University of Hawaii and the University of Hawaii foundation shall continue until a new management arrangement is approved by the board of regents or until June 30, [1999,] 2004, whichever occurs earlier.

(b) All permanent full-time general fund positions currently held by state employees presently assigned to the Waikiki Aquarium shall remain as such; provided that in the event a management arrangement with a nonprofit corporation is approved by the board of regents pursuant to this section, and section [304- ,] 304-30, Hawaii Revised Statutes, the employees shall remain as such under the supervision of that nonprofit corporation; and provided further that any proposed changes shall be subject to chapter 89, Hawaii Revised Statutes, and the applicable collective bargaining agreements."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)

ACT 104

H.B. NO. 333

A Bill for an Act Making An Appropriation for Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of $700,000 or so much thereof as may be necessary for fiscal year 1999-2000 for agricultural research and development to be performed by the Hawaii Agriculture Research Center.

SECTION 2. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved June 25, 1999.)

ACT 105

H.B. NO. 377

A Bill for an Act Relating to Economic Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and determines that employment and economic opportunities have exponentially increased in communities in which the high technology industry is concentrated, and that it is in the public interest to promote Hawaii's economic growth by supporting the high technology industry in this State. The legislature further finds and declares that facilities which support the high technology industry will promote the economic growth of the State by making the State a more attractive location for the high technology industry and support the State's existing high technology industry, that the high technology industry constitutes an industrial enterprise within the meaning of part V, chapter 39A, Hawaii Revised Statutes, and that the issuance of special purpose revenue bonds, the proceeds of which will be loaned to a not-for-profit corporation for the acquisition and development of such facilities, is also authorized under part V, chapter 39A, Hawaii Revised Statutes.

The legislature further finds and declares that the issuance of special purpose revenue bonds under this Part is in the public interest, and for the public health, safety, and general welfare of the State, and promotes the development of a high technology industry in the State.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed $100,000,000, for the purpose of assisting Ohana Foundation, a Hawaii not-for-profit corporation, and/or one or more of its not-for-profit affiliates in financing or refinancing costs related to the acquisition and development of facilities of, or for, or to assist the high technology industry, including without limitation, facilities for research, development, technology development, and technology support. The legislature finds and determines that the activities and facilities of Ohana Foundation, or its not-for-profit affiliates, constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this part shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. The authorization to issue special purpose revenue bonds under section 2 of this Act shall lapse on June 30, 2003.

SECTION 6. Section 39A-151, Hawaii Revised Statutes, is amended by amending the definitions of "project" and "project agreement" to read as follows:

"'"Project" means any combination of land, buildings, and other improvements thereon, including without limitation parking facilities, for use [as] <u>of, or for, or to assist</u> an industrial enterprise, including, without limiting the generality of the

foregoing, machinery, equipment, furnishings, and apparatus which shall be deemed necessary, suitable, or useful to such enterprise.

"Project agreement" means any agreement entered into under this part by the department with a project party to finance, construct, operate, or maintain [an industrial plant] a project from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist an industrial enterprise, including without limitation any loan agreement."

SECTION 7. The director of finance may petition the state supreme court for an opinion as to the validity of any special purpose revenue bonds to be issued under sections 1 to 6 of this Act to assist an industrial enterprise under article VII, section 12, of the state constitution.

The petition shall constitute a case for the purposes of section 602-5, Hawaii Revised Statutes, and the supreme court shall have exclusive and original jurisdiction to receive and determine the question presented in the petition, irrespective of an actual controversy or dispute regarding the project agreement or its validity.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

ACT 106 H.B. NO. 582

A Bill for an Act Relating to Landowner Liability.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 198D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§198D- Limitation on liability.** The State shall not be liable for any injury to any person arising from the person's use of unimproved lands owned or controlled by the State and regulated under section 198D-6, unless the injury results from gross negligence on the part of the State."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 107 H.B. NO. 753

A Bill for an Act Relating to the Establishment of Special Improvement Districts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§46- Special improvement district.** (a) In addition and supplemental to the authority vested in the counties by sections 46-80 and 46-80.1, any county having a charter may enact an ordinance, and may amend the same from time to time, authorizing the creation of special improvement districts for the purpose of providing and financing supplemental maintenance and security services and such other improvements, services, and facilities within the special improvement district as the council of the county determines will restore or promote business activity in the special improvement district and making and financing improvements therein. Each separate special improvement district shall be established by a separate ordinance enacted as provided in the ordinance authorizing the creation of special improvement districts. The ordinance authorizing the creation of special improvement districts may permit the county to provide for a board or association, established pursuant to chapter 415B, to provide management of the special improvement district, and to carry out activities as may be prescribed by the ordinance authorizing the creation of special improvement districts and the ordinance establishing the special improvement district as permitted thereby.

(b) The county may levy and assess a special assessment on property located within the special improvement district to finance the maintenance and operation of the special improvement district and to pay the debt service on any bonds issued to finance improvements within the special improvement district. Notwithstanding any law to the contrary, in assessing property for a special assessment, the county may implement a methodology as the council of the county deems appropriate. The special assessment may be fixed in an amount or appropriated on a basis as the council of the county deems appropriate, and it shall not be essential that the property subject to the special assessment be improved or benefitted by the operation and maintenance of the special improvement district or any activity or improvement undertaken for, and financed by, the special improvement district.

(c) The county may issue and sell bonds to finance improvements within the special improvement district and the ordinance authorizing the creation of special improvement districts may provide the method, procedure, and type or types of security for those bonds. Each issue or series of bonds shall be authorized by ordinance separate from the ordinance establishing the special improvement district. The bonds shall be in amounts, in denomination or denominations, in form or forms, executed in a manner, payable in place or places and at time or times, bear interest at rate or rates (either fixed or variable), mature on date or dates and provide terms and conditions of redemption, provide security (including the pledge of proceeds of the bonds, special assessments, and the lien therefor), provide for credit enhancement, if any, administration, terms of investment of proceeds of the bonds and special assessment receipts, provide terms of default and remedy, and other terms and conditions, as the council of the county deems necessary or proper. The bonds may be sold in a manner and at price or prices as the council of the county shall determine. Bonds issued pursuant to this section and the interest thereon and other income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision, except inheritance, transfer, and estate taxes.

(d) Notwithstanding any other law to the contrary, no action or proceeding to object to or question the validity of or enjoining any ordinance, action, or proceeding permitted by this section (including the liability for or the determination of the amount of any special assessment levied or the imposition thereof), or any bonds issued or to be issued pursuant to an ordinance enacted as permitted by this section, shall be maintained unless begun within thirty days of the enactment of the ordinance, determination, or other act, as the case may be and, in the case of the assessment, whether the determination or levy, within thirty days after adoption of the ordinance authorizing or amending the assessment formula and, in the case of bonds, within thirty days after enactment of the ordinance authorizing the issuance of the bonds.

(e) Exemptions.

(1) Property owned by the state or county governments or entities, may be exempt from the assessment except as provided in paragraph (3);

(2) Property owned by the federal government or entities, shall be exempt from the assessment except as provided in paragraph (3);

(3) If a public body owning property, including property held in trust for any beneficiary, which is exempt from an assessment pursuant to paragraphs (1) and (2), grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the assessment, notwithstanding paragraphs (1) and (2), shall be levied on the leasehold or possessory interest and shall be payable by the lessee; and

(4) No other properties or owners shall be exempt from the assessment unless the properties or owners are expressly exempted in the ordinance establishing a district adopted pursuant to this section or amending the rate or method of assessment of an existing district.

(f) The assessments levied pursuant to the ordinance authorizing the creation of special improvement districts, the ordinance establishing a district, and this section shall be a lien upon the property assessed. The lien shall have priority over all other liens except the lien of general real property taxes and shall be on a parity with the lien of assessments levied under sections 46-80 and 46-80.1.

(g) Any board or association established for the purposes of carrying out the activities described in this section shall not be deemed a governmental body. The board and association shall neither be deemed to be a government department, agency, or a county nor to be performing services on behalf of a government department, agency, or county."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 108 H.B. NO. 842

A Bill for an Act Relating to Glass Container Recoveries.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 342G-85, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The amount due from glass container importers less glass containers exported for the calendar year shall be the sum equal to the number of glass containers provided in subsection (a) multiplied by the advance disposal fee of [.015] 1.5 cents. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii". All subsequent inventory reports and payments shall be made not later than the fifteenth day of the month following the end of the previous calendar quarter, except for those importers subject to subsection (d).

(c) A glass container importer who imports [less] fewer than five thousand glass containers within a one-year period shall be exempt from payment of the fee.

Any empty, imported glass container designed to hold not more than two and one-half fluid ounces of a product meant for human consumption shall be exempt from the fee."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on October 1, 1999.

(Approved June 25, 1999.)

ACT 109 H.B. NO. 850

A Bill for an Act Relating to Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Whenever by reason of a conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses listed in this subsection, under the laws of the State or ordinances of any political subdivision, a court of competent jurisdiction has discretion to revoke or suspend a driver's license but does not revoke or suspend the license, the administrator shall nevertheless after the expiration of thirty days from the date of conviction or adjudication suspend the license and shall keep the same suspended, and the person so convicted or adjudicated shall not thereafter operate a motor vehicle, unless and until the person so convicted or adjudicated furnishes and thereafter maintains proof of financial responsibility. The offenses referred to are:

(1) Reckless or inattentive driving, driving while under the influence of intoxicating liquor, driving while under the influence of drugs, and driving while that person's license has been suspended or revoked, except when a person's license has been suspended or revoked for the first conviction of driving without a motor vehicle insurance policy; and

(2) Conviction or adjudication under part V of chapter 571 by reason of any moving violation offense involving a motor vehicle if the motor vehicle is in any manner involved in an accident in which any person is killed or injured, or in which damage to property results to an apparent extent in excess of $3,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault[; and

(3) Driving without a valid motor vehicle insurance policy if the conviction occurs within a five-year period from any prior conviction]."

SECTION 2. Section 431:10C-104.5, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10C-104.5 Amnesty period for uninsured motorists.** Notwithstanding any other provision of law to the contrary, any penalties and any provision for surcharge based on prior failure, since January 1, 1996, to maintain no-fault or motor vehicle insurance or suspension or revocation of license due solely to failure to maintain no-fault or motor vehicle insurance shall not apply to any uninsured motorist who obtains the required coverages prior to December 31, [1998.] 1999."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

ACT 110 H.B. NO. 854

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

"**§237-31 Remittances.** All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that the sum from all general excise tax revenues realized by the State that represents the difference between [$90,000,000] $45,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund; provided further that a sum, not to exceed $5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

ACT 111

H.B. NO. 989

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:		AMOUNT
Abalos v. State of Hawaii, et al. Civil No. 96-0282, Fifth Circuit		$ 44,707.70 Settlement
Akiba, DLIR v. Schuman Carriage Buick-Cadillac-Subaru, Inc., Civil No. IRC97-5743, District Court		$ 5,287.82 Judgment
Amount of Judgment: Interest at 4% from 7/20/98:	$ 5,067.82 $ 220.00	
Bueno v. Matsumoto, et al. Civil No. 94-0019, Fifth Circuit		$ 45,000.00 Settlement
Burns-Vidlak, et al. v. Chandler, et al. Civil No. 95-00892 BMK, U.S.D.C.		$ 20,704.31 Judgment
Casteel v. State of Hawaii Civil No. 96-0091(2), Second Circuit		$ 240,000.00 Settlement
Coveyou v. State of Hawaii, et al. Civil No. 96-0870-03, First Circuit		$ 115,861.00 Settlement
Amount of Settlement: Interest at 4% from 4/1/98:	$110,000.00 $ 5,861.00	
Cunningham v. State of Hawaii, et al. Civil No. 96-3816-09, First Circuit		$ 200,000.00 Settlement
DesMarais v. Lau, et al. Civil No. 93-2040-05, First Circuit		$ 15,000.00 Settlement
Doe v. Sumner, et al. Civil No. 94-2886-08, First circuit		$ 15,000.00 Settlement
Echiberi v. State of Hawaii Civil No. 97-1800-05, First Circuit		$ 24,000.00 Settlement
Edwards v. State of Hawaii Civil No. 96-01198 DAE, USDC		$ 84,320.00 Settlement
Environment Hawaii, et al. v. Wilson, et al. Civil No. 97-2404-06, First Circuit		$ 37,354.64 Judgment
Freitas v. State of Hawaii Civil No. 97-4242-10, First Circuit		$ 125,000.00 Settlement

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:		AMOUNT
Gonsalves v. State of Hawaii, et al. Civil No. 98-0485(1), Second Circuit		$ 16,000.00 Settlement
Jordan v. State of Hawaii Civil No. 96-0304, Fifth Circuit		$ 20,000.00 Settlement
Kautz v. University of Hawaii, et al. Civil No. 98-1478-03, First Circuit and Civil No. 96-01012, USDC		$ 50,000.00 Settlement
King v. State of Hawaii Civil No. 93-2919-07, First Circuit		$ 20,000.00 Settlement
Lee v. Su, et al. Civil No. 97-2272-06, First Circuit		$ 115,000.00 Settlement
Matias v. Giacobetti, et al. Civil No. 98-0218-01, First Circuit		$ 25,000.00 Settlement
Matsushima v. State of Hawaii Civil No. 97-4997-12, First Circuit		$ 16,000.00 Settlement
Miles v. State, et al. Civil No. 96-4238-10, First Circuit		$ 20,000.00 Settlement
Morales v. State of Hawaii, et al. Civil No. 96-3401-08, First Circuit		$ 15,000.00 Settlement
Napeahi v. Wilson, et al. Civil No. 85-9523 DAE, U.S.D.C. Amount of Settlement: Interest at 10%:	 $185,000.00 $ 18,500.00	$ 203,500.00 Settlement
Nobriga v. Department of Public Safety, et al. Civil No. 97-3733-09, First Circuit		$ 14,229.33 Settlement
O'Donnell v. The University of Hawaii, et al. Civil No. 93-3019-08, First Circuit		$ 27,000.00 Settlement
Ome v. State of Hawaii Civil No. 97-3464-08, First Circuit		$ 175,000.00 Settlement
Pangilinan v. State Civil No. 96-4956-12, First Circuit		$ 20,000.00 Settlement
Perez v. State Civil No. 93-0611-02, First Circuit		$ 35,000.00 Settlement
Piko v. State of Hawaii, et al. Civil No. 96-1927-05, First Circuit		$ 120,000.00 Settlement
Prevost v. State of Hawaii Civil No. 97-2227-05, First Circuit Amount of Judgment: Interest at 4% from 6/17/98:	 $ 60,400.78 $ 2,715.00	$ 63,115.78 Judgment
Quiaoit v. State of Hawaii Civil No. 94-3714-09, First Circuit Amount of Judgment: Interest at 4% from 7/11/97:	 $303,373.17 $ 5,219.97	$ 306,693.95 Judgment
Saunders, et al. v. Knudsen, et al. Civil No. 97-01038DAE, USDC		$ 80,000.00 Settlement

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:		AMOUNT
Shannon, et al. v. State of Hawaii, et al. Civil No. 98-00228 HG, USDC Claimant #1: $71,666.66 Claimant #2: $71,666.66 Claimant #3: $71,666.66 Claimant #4: $71,666.66 Claimant #5: $71,666.66 Claimant #6: $71,666.66		$ 430,000.00 Settlement
Silva v. State of Hawaii, et al. Civil No. 93-3361-08, First Circuit Amount of Settlement: Interest at 4% from 4/1/98:	 $ 25,000.00 $ 1,310.00	$ 26,310.00 Settlement
Singleton v. State of Hawaii, et al. Civil No. 97-0091K, Third Circuit		$ 160,000.00 Settlement
Trendler v. State of Hawaii, et al. Civil No. 95-0924(3), Second Circuit		$2,000,000.00 Settlement
Trim v. Adams, et al. Civil No. 95-4339-11, First Circuit		$ 95,000.00 Settlement
Victorino v. State of Hawaii, et al. Civil No. 96-0635(1), Second Circuit		$ 16,666.66 Settlement
Weldon v. Murray, et al. Civil No. 96-4062-10, First Circuit		$ 50,000.00 Settlement
Witsell v. State of Hawaii Civil No. 96-0401-01, First Circuit		$ 25,000.00 Settlement
Claim of C. Brewer Homes, Inc.		$ 800,000.00 Settlement
MISCELLANEOUS CLAIMS:		
Carlos Angora		$ 5,385.68
Richard K. Blaisdell		$ 597.60
Gem of Hawaii, Inc.		$ 805.96
Kepuhi Partnership		$ 1,042.28
Henry Marion		$ 858.04
Harold Masumoto		$ 269,792.50
Leora Murakami		$ 379.00
SMS Research and Marketing		$ 3,950.00
Ethel Tomoguchi		$ 908.41
Daniel C. Malakie		$ 640.76
Evon K. Kaawa		$ 87.66
Shirley L. Wong		$ 107.40
Steven S. Yamaki		$ 91.47
Jo Ann Loa		$ 171.60
Leighton Y.H. and Valerie Ah Cook		$ 334.00
Alison Johns		$ 200.00
Estate of Yaeko Fasone		$ 258.00
Lydia T. Auyong		$ 167.40
Jody K. Uchida		$ 107.46
David G. Yukimura		$ 1,121.80
Daniel and Carol Eckstein		$ 2,179.97

SECTION 2. The sums hereinabove appropriated may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in the several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon warrants or checks issued by the comptroller of the State:

(1) Upon vouchers approved by the director of taxation as to claims for refunds of taxes; and

(2) Upon vouchers approved by the attorney general as to all other claims.

SECTION 3. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

SECTION 4. All unexpended and unencumbered balances of the appropriations made by sections 1 and 2 of this Act as of the close of business on June 30, 2000, shall lapse into the fund from which appropriated.

SECTION 5. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

"§ - **Claims against the State; report to the legislature.** (a) The attorney general shall develop and implement a procedure, no later than October 1, 1999, for advising its client agencies on how to avoid future claims, by requesting client agencies to take corrective action to eliminate or mitigate those factors identified by the attorney general as contributing to the State's negligence. Based upon this advice, the client agencies shall develop new policies or modify existing practices to avoid repetition of similar claims.

(b) The attorney general shall submit a report to the speaker of the house of representatives, the president of the senate, and the chairs of the house and senate judiciary committees no later than twenty days prior to the convening of each regular legislative session describing the claims and the attendant circumstances therein and containing the advice for corrective action rendered to the agency. The report shall also contain the remedial measures which the Attorney General shall take or recommended that the Legislature take if an agency fails to take corrective action within a reasonable period of time. The report shall be deemed a confidential and privileged communication to the legislature and shall not be disclosed pursuant to sections 92F-13 and 92F-19(b)."

SECTION 6. Section 37-77, Hawaii Revised Statutes, is amended to read as follows:

"**§37-77 Claims for legislative relief.** All claims for refunds, reimbursements, or other payments, authorization for which is sought from the legislature, shall, as a condition to their being considered by the legislature, be filed with the attorney general together with all data and documents in support thereof[.] within six years from the date on which the claim for payment matured. In the absence of a showing of sufficient reason therefor, failure to comply with this paragraph shall be deemed sufficient cause for refusal of the legislature to consider the claims.

The attorney general shall, immediately upon receipt thereof, refer any claim and data so received by the attorney general to the agency concerned or the comptroller, and the agency to which the reference is made or the comptroller shall immediately investigate the claim, secure all available data and documents bearing thereon, and refer the same back to the attorney general with its recommendations

thereon. The attorney general shall review the claim and make a recommendation as to the disposition of the claim.

The attorney general shall, within five days after the opening of the session, transmit to the legislature the claims which are then recommended for approval in an appropriate legislative bill form, together with an explanation for each claim. Additional recommendations for approval may be transmitted later in the session. All claims for which there is a recommendation of denial shall also be reported to the legislature with an explanation. The data and documents submitted by claimants shall be available for inspection by the legislature."

SECTION 7. The attorney general shall consult with the governor prior to entering into any settlement agreement for awards exceeding $75,000 that are subject to legislative approval.

SECTION 8. If any provision of this Act, or the application thereof to any person or entity or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 10. This Act shall take effect on July 1, 1999.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §236-16.5.

ACT 112 H.B. NO. 1012

A Bill for an Act Relating to the Clean Hawaii Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 201, Hawaii Revised Statutes, is amended by adding to part VIII two new sections to be appropriately designated and to read as follows:

"**§201- Definitions.** As used in this part:

"Department" means the department of business, economic development, and tourism.

"Director" means the director of business, economic development, and tourism.

§201- Clean Hawaii fund established. (a) There is established within the state treasury a special fund to be known as the clean Hawaii fund, which shall be administered and used by the department to market and promote the development of local processing and manufacturing industries for collected recycled materials. All moneys derived from the following sources to market and promote the development of local processing and manufacturing industries for collected recycled materials shall be deposited into the fund:

(1) Moneys appropriated to the fund by the legislature;
(2) Moneys received by the department from federal, state, or county agencies;
(3) Direct transfers of funds from federal, state, or county agencies;
(4) Moneys received in fees, royalties, or premiums;

(5) Private grants, contracts, or gifts;
(6) Funds from other sources; and
(7) Earnings on investments.

(b) The department may use moneys in the clean Hawaii fund to:

(1) Make grants for marketing and promoting the development of local processing and manufacturing industries for collected recycled materials, subject to the standards provided in section 42F-103;
(2) Pay for expenses, fees, or costs related to the marketing, promotion, or development of local processing, manufacturing, or purchasing of recycled products; or
(3) Pay for expenses, fees, or costs to organize, conduct, sponsor, or cooperate with others in sponsoring conferences, workshops, demonstrations, studies, or other events or functions that are related to the stimulation and formation of recycling or environmental businesses.

(c) The director may execute contracts and adopt rules pursuant to chapter 91 to implement the purposes of the clean Hawaii fund."

SECTION 2. Section 9 of Act 202, Session Laws of Hawaii 1994, as amended by Act 2, Special Session Laws of Hawaii 1995, is amended to read as follows:

"SECTION 9. The clean Hawaii center shall cease to exist on June 30, 1999; provided that on June 29, 1999, all unexpended or unencumbered balances remaining in the clean Hawaii fund established in section 4 of Act 2, Special Session Laws of Hawaii 1995, shall be transferred to the [Hawaii capital loan program.] clean Hawaii fund established by Act 112, Session Laws of Hawaii 1999. Section [210- ,] 210-3.5, Hawaii Revised Statutes, shall be repealed on June 30, 1999."

SECTION 3. In printing this Act, the revisor of statutes shall insert the appropriate number of this Act in section 2.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect on June 28, 1999.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 113 H.B. NO. 1020

A Bill for an Act Relating to the Hawaii Capital Loan Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds it necessary to amend Act 311, Session Laws of Hawaii 1996; Act 104, Session Laws of Hawaii 1998; and Act 118, Session Laws of Hawaii 1998, to provide appropriate effective dates for the implementation of the business loan guarantee program and an extension of the effective date for the neighbor island preferential business loan interest rate.

SECTION 2. Section 210-6, Hawaii Revised Statutes, shall be amended to read as follows:

"**§210-6 Direct loans, terms, and restrictions.** (a) The department of business, economic development, and tourism may make loans to small business concerns for the financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials, or for the supplying of working capital. The loans may be made in conjunction with loans made by other financial institutions, including the Small Business Administration. Where the loans made by the department are secured, the security may be subordinated to the loans made by other financial institutions, when the subordination is required to obtain loans from such institutions. The necessity for and the extent of security required in any loan shall be determined by the director of business, economic development, and tourism.

(b) The department may make loans to business concerns located in a county with a population of less than 150,000; provided that the interest on loans made under this subsection shall bear simple interest at the rate of three per cent below the prime rate or at a rate of five and one-half per cent a year, whichever is lower. For purposes of this subsection, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the rate charged by the two largest banks in the State of Hawaii identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by the institutions, the lower of the two shall be used. Payments required under loans made under this subsection may be deferred, but no loans made under this subsection shall be forgiven.

(c) Except as may be expressly provided otherwise for loans made under subsection (b), the foregoing powers shall be subject to the following restrictions and limitations:

(1) No loans shall be granted unless financial assistance is not available to the applicant. The condition may be waived by the director for participation loans or loan guarantees with a private financial institution;
(2) The amount of the loan or loans to any one applicant at any one time shall in no case exceed a total of $1,000,000;
(3) No loan shall be made for a term exceeding twenty years;
(4) Within counties of a population exceeding 150,000, each loan shall bear simple interest at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is lower. For purposes of this paragraph, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the rate charged by the two largest banks in the State identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by the institutions, the lower of the two shall be[1] used;[2]
(5) The commencement date for the repayment of the first installment on the principal of each loan may be deferred by the director, but in no event shall such initial payment be deferred in excess of five years; and
(6) The payment of interest on the principal of a loan may be deferred by the director, but in no event shall interest payments be deferred in excess of two years from the date of issuance of the loan.

(d) Except as may be expressly provided otherwise for loans made under subsection (b), any restriction or limitation in subsection (c) may be waived at the director's discretion where the applicant is a reuse or recycling business that meets the following criteria:

(1) The business has potential to have an impact on overall solid waste reduction and achievement of the State's reduction goals;
(2) The business addresses the alternative management of wastes identified by the solid waste disposal facility operators as problematic;
(3) The business maximizes economic benefits through import reduction or an increase in the tax base;

(4) The business has potential for job creation; and
(5) The business has a plan that accurately reflects detailed and justifiable expenses and revenues, shows potential for profit, and an ability to meet market demand for end products.

(e) The department may contract with any financial institution for services including servicing or administering loans pursuant to this section.

(f) For purposes of this section, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including without limitation, banks, savings banks, savings and loan companies or associations, financial services loan companies, and credit unions."

SECTION 3. Act 311, Session Laws of Hawaii 1996, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect on July 1, 1996[, and shall be repealed on June 30, 1999; provided that section 210-6, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act]."

SECTION 4. Act 104, Session Laws of Hawaii 1998, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect on July 1, 1998[; provided that section 4 of this Act shall be repealed on June 30, 2000, and section 210-6(c), Hawaii Revised Statutes, is reenacted as it appeared on July 2, 1996]."

SECTION 5. Act 118, Session Laws of Hawaii 1998, is amended as follows:

1. By amending section 11 to read as follows:

"SECTION 11. This Act shall take effect upon its approval; provided that[:
(1)] Part I shall take effect on July 1, 1998, and shall be repealed on June 30, 2000[; and
(2) Section 7 shall take effect on July 1, 1999]."

2. By repealing section 7.

["SECTION 7. Section 210-6, Hawaii Revised Statutes, is amended to read as follows:

"§210-6 Direct loans, terms, and restrictions. (a) The department of business, economic development, and tourism may make loans to small business concerns for the financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials, or for the supplying of working capital. The loans may be made in conjunction with loans made by other financial institutions, including the Small Business Administration. Where the loans made by the department are secured, the security may be subordinated to the loans made by other financial institutions, when the subordination is required to obtain loans from such institutions. The necessity for and the extent of security required in any loan shall be determined by the director of business, economic development, and tourism.

(b) The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No loans shall be granted unless financial assistance is not available to the applicant. The condition may be waived by the director for participation loans with a private financial institution;
(2) The amount of the loan or loans to any one applicant at any one time shall in no case exceed a total of $1,000,000;
(3) No loan shall be made for a term exceeding twenty years;

(4) Each loan shall bear simple interest at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is lower. For purposes of this paragraph, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the rate charged by the two largest banks in the State of Hawaii identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by the institutions, the lower of the two shall be used;

(5) The commencement date for the repayment of the first installment on the principal of each loan may be deferred by the director, but in no event shall such initial payment be deferred in excess of five years; and

(6) The payment of interest on the principal of a loan may be deferred by the director, but in no event shall interest payments be deferred in excess of two years from the date of issuance of the loan.

(c) Any restriction or limitation in subsection (b) may be waived at the director's discretion where the applicant is a reuse or recycling business that meets the following criteria:

(1) The business has potential to have an impact on overall solid waste reduction and achievement of the State's reduction goals;

(2) The business addresses the alternative management of wastes identified by the solid waste disposal facility operators as problematic;

(3) The business maximizes economic benefits through import reduction or an increase in the tax base;

(4) The business has potential for job creation; and

(5) The business has a plan that accurately reflects detailed and justifiable expenses and revenues, shows potential for profit, and an ability to meet market demand for end products.

(d) The department may contract with any financial institution for services including servicing or administering loans pursuant to this section.

(e) For purposes of this section, ''financial institution'' means any organization authorized to do business under state or federal laws relating to financial institutions, including without limitation, banks, savings banks, savings and loan companies or associations, financial services loan companies, and credit unions.'']

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)

Notes

1. Prior to amendment ''utilized;'' appeared here.
2. ''Used;'' should be underscored.

ACT 114 H.B. NO. 1085

A Bill for an Act Making Emergency Appropriations for Education.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

PART II

SECTION 2. Act 116, Session Laws of Hawaii 1998, appropriated a certain designated sum to the department of education to provide funds for the operations of its programs for the fiscal period beginning July 1, 1998, and ending June 30, 1999.

The purpose of this part is to appropriate moneys to:

(1) Enable the department of education to fulfill the requirements of the Felix v. Cayetano consent decree;
(2) Prevent the reduction or discontinuance of essential services for students in regular and special education programs; and
(3) Purchase books and equipment for two new schools, Kapolei middle school and Keaau high school.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $11,100,000 or so much thereof as may be necessary for fiscal year 1998-1999 for operational expenses of the department of education.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $3,643,708 or so much thereof as may be necessary for fiscal year 1998-1999 for books and equipment for Kapolei middle school.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of $1,763,722 or so much thereof as may be necessary for fiscal year 1998-1999 for books and equipment for Keaau high school.

SECTION 6. The sums appropriated shall be expended by the department of education for the purposes of this part.

PART III

SECTION 7. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

ACT 115 H.B. NO. 1111

A Bill for an Act Relating to Year 2000 Errors By Computer-Based Systems.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that virtually every business and consumer in the State of Hawaii is potentially affected by the practice in many computer-based systems of utilizing the two low order digits to represent a four digit year. While this is common practice for handwriting dates, such as 1/1/98 as an abbreviation of January 1, 1998, it will lead to errors in computer-based systems that handle date data in and after the year 2000. This practice, along with the use of other erroneous date-related computer logic, came to be known as the "year 2000 problem."

The legislature further finds that in the absence of remedial legislation, the usual methods of determining responsibility and providing remedies for year 2000-related errors through the courts are likely to result in a multitude of lawsuits and the expenditure of substantial time and money in the litigation process. Additionally, the legislature finds that businesses are diverting money and other resources away from programs to remedy the year 2000 problem at this critical time to work on litigation defense and claims preservation strategies. This diversion of resources has the potential to impair completion of these essential year 2000 compliance programs.

The pervasive nature and fixed deadline of the year 2000 problem creates a unique situation which justifies a modification to the usual legal rights, remedies, and dispute resolution procedures available under the law.

This part is intended to provide protection for persons who exercise commercially reasonable efforts to identify and find solutions for computer-based systems that may be affected by year 2000 errors.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
YEAR 2000 ERRORS IN COMPUTER-BASED SYSTEMS

§ **-1 Definitions.** As used in this chapter:

"Claimant" means the plaintiff in a lawsuit or a person otherwise asserting a claim.

"Computer-based system" includes any computer or other information technology system, and any electronic device that controls, operates, monitors, or assists in the operation or functioning of equipment, machinery, plant, or a device using an embedded or installed microprocessor or chip.

"Consumer" means a natural person who, primarily for personal, family, or household purposes, purchases, attempts to purchase, or is solicited to purchase goods or services.

"Core activities" means those business activities of a person which are supported by computer-based systems and which have been identified by the person, based on reasonable internal criteria, as being central to the continued operation of the business.

"Respondent" means the defendant in a lawsuit or a person otherwise defending against a claim, and includes those persons who are liable on a claim, but who were not made a party to the lawsuit or other assertion of the claim.

"Year 2000 error" means the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare, or sequence date and time data from, into, or between the years 1999 and 2000 and beyond, and leap year calculations.

§ -2 **Applicability.** (a) Claims properly filed by consumers in the small claims division of the district courts shall be excluded from the alternative dispute resolution procedure contained in section -4.

(b) The provisions in this chapter shall not apply to claims asserted by or against the State, its political subdivisions, a board, or a government employee, arising out or relating to a year 2000 error produced, calculated, or generated by a government computer system or other computer-based system, regardless of the cause for the year 2000 error.

As used in this subsection:

"Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions that is created by constitution, statute, rule, or executive order to have supervision, control, jurisdiction, or advisory power over specific matters.

"Government employee" includes an officer or employee of the State, its political subdivisions, or board, including a person acting on behalf of a board in an official capacity, temporarily or permanently, whether with or without compensation.

(c) The provisions in section -4 may be modified or waived by express agreement. Any such modification or waiver shall be explicit, and no intent to modify or waive these protections shall be inferred.

(d) The provisions in this chapter shall not apply to claims for physical injury or death.

§ -3 **Blanket protections.** (a) No statutory minimum, treble damages, or non-economic damages shall be awarded under any theory of recovery for claims arising out of a year 2000 error unless one of the following is found to have occurred in addition to the other facts necessary for the award of such damages:

(1) The year 2000 error was intentionally created by the respondent with the intent to cause damage or injury;
(2) The respondent had entered into an agreement to discover or remedy year 2000 errors with the intent to defraud the claimant;
(3) The damage or injury was caused by the dissemination of corrupted data to recipients:
    (A) With actual knowledge that errors were occurring;
    (B) Without reasonable efforts at warning; and
    (C) Without reasonable efforts to correct the cause of the errors.

§ -4 **Procedure; alternative dispute resolution.** In any dispute in which a year 2000 error is alleged as a claim or a defense, within twenty days of service of the last pleading, the plaintiff shall contact the court in which the action has been filed and shall schedule a conference with the court. The court and the attendees shall discuss alternative dispute resolution options. The court may require each party to submit to the court prior to the conference a statement of any objections to alternative dispute resolution and the reasons for objecting. The court, in its discretion or upon motion by a party, during the conference or at a later date, may order the parties to participate in an alternative dispute resolution process subject to conditions imposed by the court. The cost for the alternative dispute resolution process shall be apportioned in accordance with the agreement of the parties, or as otherwise ordered by the court.

§ -5 **Software and hardware manufacturer liability.** Nothing in this chapter shall relieve a computer software or hardware manufacturer or vendor of any liability for a year 2000 error. A computer software or hardware manufacturer or vendor shall be directly liable to a person harmed by a year 2000 error to the same extent that the computer software or hardware manufacturer or vendor would be liable to a person in the absence of the provisions of this chapter. As used in the section, ''computer software or hardware manufacturer or vendor'' shall not include the State, its political subdivisions, a board, or a government employee.

§ -6 **Liability.** (a) All alternative dispute resolution awards and all judgments in a court proceeding which award damages on a claim arising out of a year 2000 error shall state whether the claimant and the respondent engaged in commercially reasonable efforts to avoid the impact of year 2000 errors.

(b) The trier of fact shall make an independent determination that the actions taken by a claimant or respondent constitute commercially reasonable efforts, based on the totality of the circumstances, and notwithstanding that the party's efforts failed to avoid all year 2000 errors affecting its computer-based systems. In making the determination, the trier of fact shall examine the party's efforts as a whole and shall take into consideration the sophistication of and resources available to the party. The burden of proof shall be on the party claiming that it engaged in commercially reasonable efforts, and the standard of proof shall be a preponderance of the evidence.

(c) A claimant or respondent shall not be found to have undertaken commercially reasonable efforts unless it has, at a minimum:

(1) Implemented the remediation steps in timely fashion; and

(2) Complied with any data formats established by a government regulation, a governing body (such as the National Automated Clearing House Association for certain financial transactions) or reasonably requested by the other party where the parties exchange electronic information which was impacted by the alleged year 2000 error.

(d) ''Remediation steps'' means, for a person addressing potential year 2000 errors, awareness, assessment, renovation, validation, and implementation. The reasonableness of those steps shall be determined by the circumstances, including the sophistication of and resources available to the person carrying them out.

(1) The awareness step generally includes providing any supervisory personnel with information about the year 2000 problem and the designation of personnel to deal with the person's potential for year 2000 errors.

(2) The assessment phase generally includes a determination of the impact of potential year 2000 errors on the person (including those caused by computer-based systems controlled by the person and those controlled by others), identification of core activities, a physical inventory of potentially affected computer-based systems supporting core activities, prioritization of items with potential year 2000 errors to create a remediation schedule, determining whether the item records dates or processes date information, identifying and obtaining resources to address potential year 2000 errors, the development of a remediation strategy for each item with the potential for year 2000 errors, and the development of a recovery plan to handle those year 2000 errors which are reasonably likely to occur.

(3) The renovation step generally includes the conversion, upgrade, replacement, or elimination of computer-based systems supporting core activities which are subject to year 2000 errors.

(4) The validation step generally includes validating existing, converted, or replaced computer-based systems supporting core activities. "Validating" means:

(A) Testing the item to actually simulate the transition from December 31, 1999, to January 1, 2000, the processing of other date data which may reasonably be expected to trigger a year 2000 error, and a determination that no year 2000 error occurs; and

(B) Where the item has been renovated to correct known or suspected year 2000 errors, testing to assure that the item continues to properly perform its functions without error. This testing includes but is not limited to integration and acceptance testing. When testing is not reasonably possible, the validation step consists of securing documentation from the developer or vendor of a computer-based system supporting core activities that it is free of potential year 2000 errors. This includes vendors of core business functions, services, or supplies to understand the risk posed by the person's supply chain.

(5) The implementation step generally includes the placing of renovated or replaced computer-based systems into production use. Where a computer-based system cannot reasonably be renovated, the implementation step generally includes the implementation of a work-around designed to avoid the effect of the potential year 2000 error. Additionally, this step includes the implementation of contingency or recovery plans for those year 2000 errors which are reasonably likely to occur.

Where applicable, the person's highest level of management should determine what efforts are to be made and what resources are to be used in carrying out the remediation steps, and should monitor the progress of the remediation steps.

(e) Upon a finding that the respondent engaged in commercially reasonable efforts, the respondent's liability shall be limited to the claimant's out of pocket expenses directly caused by the year 2000 error.

(f) Upon a finding that the respondent failed to engage in commercially reasonable efforts, the respondent shall be liable for economic damages directly caused by the year 2000 error.

(g) The amount awarded to any claimant shall be reduced to the extent that the claimant's failure to engage in commercially reasonable efforts contributed in whole or part to the damages sustained. Where two or more respondents are found liable for the claimant's damages, the proportion of liability assessed against each respondent shall be proportionately adjusted based on the extent to which it engaged in commercially reasonable efforts.

§ **-7 Consumer credit protection.** A credit reporting agency or a creditor doing business in the State shall not report negative credit information about a consumer if it knew or should have known that the consumer was unable to meet his or her financial obligation due to a year 2000 error by a computer-based system, including the inability of the consumer to transact financial business or make payments due to a year 2000 error by a computer-based system."

PART II

SECTION 3. The legislature finds that Act 213, Session Laws of Hawaii 1998, established limited government immunity from claims arising out of year 2000 errors generated by a government computer system. The legislature further finds that the intent of this part is to extend the time frame covered by the immunity to beyond June 30, 1999, and expand the scope of the immunity to afford protection

as to claims arising out of year 2000 errors produced, calculated, or generated by a government computer system or other computer-based system. However, the legislature notes that this part shall not be deemed to impose any increased obligation, duty, or standard of care than is otherwise applicable under federal or state law, nor is it intended to create any new cause of action or remedy.

Thus, the purpose of this part is to amend the immunity provisions established by Act 213, Session Laws of Hawaii 1998, including the protection afforded to persons affected by a year 2000 error generated by a government computer system.

SECTION 4. Section 662-15, Hawaii Revised Statutes, is amended to read as follows:

"**§662-15 Exceptions.** This chapter shall not apply to:

(1) Any claim based upon an act or omission of an employee of the State, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved has been abused;

(2) Any claim arising in respect of the assessment or collection of any tax, or the detention of any goods or merchandise by law enforcement officers;

(3) Any claim for which a remedy is provided elsewhere in the laws of the State;

(4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(5) Any claim arising out of the combatant activities of the Hawaii national guard and Hawaii state defense force during time of war, or during the times the Hawaii national guard is engaged in federal service pursuant to sections 316, 502, 503, 504, 505, or 709 of Title 32 of the United States Code;

(6) Any claim arising in a foreign country;

(7) Any claim arising out of the acts or omissions of any boating enforcement officer; or

(8) Any claim arising out of [or based upon any failure of or error produced, calculated, or generated by a government computer system, which failure or error occurred prior to June 30, 1999 as a result of the system's not being year 2000 compliant, regardless of the cause for the system's not being year 2000 compliant. "Year 2000 compliant" means, with respect to a government computer system, that the system accurately processes date and time data (including, but not limited to, calculating, comparing, projecting, and sequencing) from, into, and between the twentieth and twenty-first centuries and the years 1999 and 2000,[1] and leap year calculations.] a year 2000 error produced, calculated, or generated by a government computer system or other computer-based system, regardless of the cause for the year 2000 error.

"Government computer system" means a computer-based system owned or operated by or on behalf of the State, its political subdivisions, or a board.

"Computer-based system" includes any computer or other information technology system, and any electronic device that controls, operates, monitors, or assists in the operation or functioning of equip-

ment, machinery, plant, or a device using an embedded or installed microprocessor or chip.

"Year 2000 error" is the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare, or sequence date and time data from, into, or between the twentieth and twenty-first centuries, the years 1999 and 2000 and beyond, and leap year calculations."

SECTION 5. Chapter 662E,[1] Hawaii Revised Statutes, is amended to read as follows:

"CHAPTER [[]1 662E[]]
[GOVERNMENT COMPUTER SYSTEMS AND YEAR 2000 COMPLIANCE]
CLAIMS AGAINST GOVERNMENT ARISING OUT OF YEAR 2000 ERRORS

[[]§662E-1[]] Definitions. As used in this chapter:

"Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions that is created by constitution, statute, rule, or executive order to have supervision, control, jurisdiction, or advisory power over specific matters.

"Computer-based system" includes any computer or other information technology system, and any electronic device that controls, operates, monitors, or assists in the operation or functioning of equipment, machinery, plant, or a device using an embedded or installed microprocessor or chip.

"Government computer system" [includes any computer or other information technology system] means a computer-based system owned or operated by or on behalf of the State, its political subdivisions, or a board.

"Government employee" includes an officer or employee of the State, its political subdivisions, or a board, including a person acting on behalf of a board in an official capacity, temporarily or permanently, whether with or without compensation.

["Year 2000 compliant" means, with respect to a government computer system, that the system accurately processes date and time data (including, but not limited to, calculating, comparing, projecting, and sequencing) from, into, and between the twentieth and twenty-first centuries and the years 1999 and 2000, and leap year calculations.]

"Year 2000 error" is the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare, or sequence date and time data from, into, or between the twentieth and twenty-first centuries, the years 1999 and 2000 and beyond, and leap year calculations."

SECTION 6. Section 662E-2, Hawaii Revised Statutes, is amended to read as follows:

"[[]§662E-2[]] Immunity against suits. [No action, including, without limitation, any action for declaratory or injunctive relief, may be brought against any person including, but not limited to, the State, its political subdivisions, a board, or a government employee, arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system, which failure or error occurred prior to June 30, 1999 as a result of the system's not being year 2000 compliant, regardless of the cause for the system's not being year 2000 compliant.]

(a) No action, including without limitation, any action for declaratory or injunctive relief, may be brought against the State, its political subdivisions, a board, or a government employee, arising out of a year 2000 error produced, calculated, or generated by a government computer system or other computer-based system, regardless of the cause for the year 2000 error, unless the error is the result of gross negligence on the part of the defendant State, political subdivision, board, or government employee. Failure to fix or prevent an error after a timely, good faith effort to do so shall not constitute gross negligence for the purpose of this subsection.

(b) Except as provided in this section, no action, including without limitation, any action for declaratory or injunctive relief, may be brought against any person arising solely out of a year 2000 error produced, calculated, or generated by a government computer system, regardless of the cause for the year 2000 error; provided, however, that nothing in this subsection shall relieve the manufacturer of the government computer system or the computer software used by the system, or the contractor who provided or serviced the government computer system or the computer software used by the system, of any liability for the year 2000 error. The manufacturer of the government computer system or the computer software used by the system, or the contractor who provided or serviced the government computer system or the computer software used by the system, shall be directly liable to a person harmed by a year 2000 error, as well as the State, a political subdivision, a board, or a government employee, to the same extent that the manufacturer of the government computer system or the computer software used by the system, or the contractor who provided or serviced the government computer system or the computer software used by the system would be liable to persons in the absence of the provisions of this subsection. As used in this subsection:

"Contractor" means a person having a contract with a governmental body, and does not include the State, its political subdivisions, a board, or a government employee.

"Manufacturer of a government computer system or the computer software" does not include the State, its political subdivisions, a board, or a government employee.

The provisions in this chapter shall not apply to any claim for physical injury or death."

SECTION 7. Section 662E-3, Hawaii Revised Statutes, is amended to read as follows:

"[[]§662E-3[]] **Remedial measures.** Nothing in this chapter shall be deemed to prevent the State, its political subdivisions, a board, or a government employee, from taking steps to remedy [any failure of or] a year 2000 error produced, calculated, or generated by a government computer system [as a result of the system's not being year 2000 compliant,] once the [failure or] error [is] has been verified."

SECTION 8. Section 662E-4, Hawaii Revised Statutes, is amended to read as follows:

"[[]§662E-4[]] **Exceptions.** Nothing in this chapter shall be deemed to provide immunity or release from liability to any person who:

(1) Deliberately tampers with a government computer system for the purpose of [preventing it from being year 2000 compliant;] causing the system to produce, calculate, or generate a year 2000 error; provided, however, that the immunity or release from liability shall remain and

not be set aside where the year 2000 error arises out of a test performed to determine whether a government computer system will produce, calculate, or generate a year 2000 error; or

(2) Receives and fails to immediately return a benefit which the person is not legally entitled to [arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system as a result of the system's not being year 2000 complaint[1]], which benefit was provided to the person as a result of a year 2000 error produced, calculated, or generated by a government computer system."

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval; provided that section 4 of this Act shall take effect retroactive to the effective date of Act 213, Session Laws of Hawaii, 1998; and provided further that this Act shall not affect any claim which has been filed in the courts on or before the date of its enactment. Section 2 of this Act shall be repealed on December 31, 2003; provided that nothing in section 2 of this Act shall be deemed to affect rights and obligations which have accrued as of that date. Chapter 662E and section 662-15(8), Hawaii Revised Statutes, shall be repealed on December 31, 2003.

(Approved June 25, 1999.)

Note

1. So in original.

ACT 116 H.B. NO. 1119

A Bill for an Act Relating to Child Protective Services.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Act 302, Session Laws of Hawaii 1996, is amended by amending section 4 to read as follows:

"SECTION 4. There is established a child protective services reform coordinating committee which shall be attached to the department of human services for administrative purposes only. It shall be the duty of the committee to make recommendations to the public agencies participating in the pilot project regarding its implementation, which shall include:

(1) Development of requests for proposals from the community;
(2) Site selection of two neighborhood places, and the development of requests for proposals from the community;
(3) Identification of pilot project goals, including the identification of a schedule and evaluation process;

(4) Development and implementation of systems-change training programs; and

(5) Coordination of financial resources, excluding the use of state funds, that may be necessary to effectuate the pilot project.

The committee, with the consent of the director of human services, may seek grants, receive gifts, funds, or donations of services-in-kind to effectuate the purposes of this Act. The child protective services reform coordinating committee shall consist of [thirteen] at least fifteen members appointed by the [governor.] director of human services. The members shall include:

(1) The director of human services, or a designated representative;

(2) The director of health, or a designated representative;

(3) The superintendent of education, or a designated representative;

(4) The executive director of the office of youth services, or a designated representative;

(5) One representative from the family court, who shall be selected from a list of nominees submitted by the chief justice of the supreme court;

(6) One representative from the blueprint for change task force created by Senate Concurrent Resolution No. 89, H.D. 1, as adopted by the legislature during the 1994 regular session;

(7) One representative from the Alliance for Health and Human Services;

(8) One representative from a community service organization with experience with child protective or child welfare services;

(9) [Three] Five representatives at-large; of which one person shall be employed at the department of human services child protective services unit; two persons shall be line staff of the child protective services unit, selected by the designated representative of the applicable collective bargaining unit; and one person shall be from each neighborhood place once the sites have been selected;

(10) One member of the house of representatives, who shall be selected from a list of nominees submitted by the speaker of the house; and

(11) One member of the senate, who shall be selected from a list of nominees submitted by the president of the senate.

The [governor shall appoint the] director of human services [as] shall be the chairperson of the committee. The members of the committee shall serve without compensation and shall be exempt from the requirements of section 26-34, Hawaii Revised Statutes. The committee may adopt [rules] procedures necessary for the purposes of this Act[; provided that such rules shall be exempt from the public notice and public hearing requirements of chapter 91, Hawaii Revised Statutes].''

SECTION 2. Act 302, Session Laws of Hawaii 1996, is amended as follows:

1. By adding a new section to read:

''SECTION 6. Notwithstanding sections 346-10 and 350-1.4, Hawaii Revised Statutes, the department of human services may share information with the neighborhood places; provided that the shared information shall remain confidential in accordance with section 350-1.4, Hawaii Revised Statutes.''

2. By amending section 6 to read:

''SECTION [6.] 7. The child protective services reform coordinating committee shall[:

(1) Submit progress reports regarding the pilot project to the legislature on a semi-annual basis; provided that copies of the report shall be made available to interested community groups; and

(2) Submit a] submit an annual progress report regarding the pilot project including legislative recommendations no later than twenty days prior

to the convening of the [1997, 1998, and 1999] 2000, 2001, and 2002 regular sessions[.]; provided that copies of the reports shall be made available to interested community groups."

3. By amending section 7 to read as follows:

"SECTION [7.] 8. This Act shall take effect on July 1, 1996, and shall be repealed on June 30, [1999.] 2002."

PART II

SECTION 3. The legislature finds that the department of human services requires additional resources to improve the delivery of child welfare services. Certain child protective services units have experienced high vacancies or extended employees' leaves of absence, and resources are needed to supplement existing staff resources to meet workload requirements. In particular, child welfare social workers need assistance in performing essential but non-emergency tasks, which include:

(1) Returning routine calls on behalf of social workers;
(2) Assisting with securing Med-QUEST applications and other information for foster parents;
(3) Transporting children for appointments or visits;
(4) Delivering documents to the courts and other agencies or providers; and
(5) Filing documents in case files.

SECTION 4. There is established in the department of human services the child welfare services demonstration project to assist and support social workers to improve the delivery of child welfare services. The department of human services may hire employees for this demonstration project without regard to chapters 76, 77, and 78, Hawaii Revised Statutes. The demonstration project shall be supervised by child welfare services staff, who shall be responsible for assignments and supervision of the demonstration project employees and coordination with the other units. The child welfare services demonstration project shall cease to exist on June 28, 2001.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)

ACT 117 H.B. NO. 1280

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 163D-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board of directors of the corporation shall consist of eleven voting members, of whom eight shall be appointed by the governor [for staggered terms]. These eight members shall be selected on the basis of their knowledge, experience, and proven expertise in small and large businesses within the agricultural industry,

agricultural economics, banking, real estate, finance, promotion, marketing, and management. Of these eight members, [four shall be selected by the senate president and four shall be selected by the speaker of the house of representatives; provided that two] one shall be from the city and county of Honolulu, [two] one shall be from the county of Hawaii, [two] one shall be from the county of Maui, [and two] one shall be from the county of Kauai[.], and four shall be appointed at-large. The director of business, economic development, and tourism; the chairperson of the board of agriculture; and the chairperson of the board of land and natural resources, or their designated representatives, shall be ex-officio, voting members of the board. All members shall continue in office until their respective successors have been appointed and qualified. The board shall annually elect its chairperson from among its members; provided that the chairperson shall not be an ex-officio member."

SECTION 2. Section 163D-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The corporation shall develop, promote, assist, and market export crops and other crops for local markets [approved by the board of agriculture]."

SECTION 3. Act 176, Session Laws of Hawaii 1998, is amended by amending section 19 to read as follows:

"SECTION 19. This Act shall take effect on July 1, 1998; provided that section 5 shall take effect on [July 1, 1999.] July 1, 2001."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $400,000 or so much thereof as may be necessary for fiscal year 1999-2000 for the expenses incurred in the performance of the duties of the agribusiness development corporation board.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 30, 1999; provided that:

(1) Section 1 shall be repealed on June 30, 2001; and

(2) Section 4 shall take effect on July 1, 1999.

(Approved June 25, 1999.)

ACT 118 H.B. NO. 1637

A Bill for an Act Relating to School Buses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-181, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) The department of transportation [may] shall grant exemptions for the use of vehicles other than school vehicles when the department finds that compliance with this section is:

(1) [Impossible] Impractical due to the unavailability of school vehicles; or

(2) Impractical due to economic factors.

No exemption shall be granted for the qualifications of individuals driving a bus as defined in section 286-2 and such individuals shall meet school vehicle driver qualifications."

2. By amending subsection (i) to read:

"(i) As used in subsection (b), a school vehicle is unavailable [only] when it:

(1) Is being used during a specific time for contracted school-related transportation to and from school or related destinations;
(2) Fails that day's inspection and has not been repaired;
(3) Is already in transportation service; [or]
(4) Is committed for transportation service[.]; or
(5) Does not meet the requests of a school for a motorcoach with undercarriage storage compartments and public address system; provided that the use of the motorcoach shall be used solely for the transportation of middle, intermediate, or high school student groups to and from school-related events or activities. As used in this paragraph, "motorcoach" means a vehicle that carries more than 25 passengers, has a gross vehicle weight rating of at least 26,000 pounds, and is no more than 15 years old."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

ACT 119 H.B. NO. 1663

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1991 the United States Department of Justice filed suit against the State of Hawaii in the United States District Court for the District of Hawaii for violations of the constitutional rights of patients at the Hawaii state hospital (HSH). The suit was brought under the authority of the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. section 1997 et seq. Concurrently, the State of Hawaii and the United States entered into a settlement agreement to correct the deficiencies at HSH, and the settlement agreement became an order of the federal court. In January, 1995, the United States District Court found the State in contempt of court for failure to achieve important requirements.

Under court order, the United States and the State of Hawaii negotiated a stipulation and a detailed remedial plan designed to solve these problems. In part to address the problems caused by inadequate staffing, the stipulation and plan included measures to provide appropriate services in the community for HSH patients who did not require hospital-level care but whose only barrier to discharge was lack of an appropriate community placement.

At a status conference on February 1, 1999, the United States District Court stated that HSH is still "grossly out of compliance" with significant requirements of its orders, most notably the requirement that the State provide adequate treatment and treatment planning for all HSH patients. The court ordered that the State of Hawaii and the United States Department of Justice, through a five-member compli-

ance committee, jointly identify and implement solutions to all outstanding issues of material significance for compliance, and that by June 15, 1999, the State "shall have in place programs designed to rectify each and every one of the material issues identified necessary to bring the facilities and services into compliance with the requirements of the court orders by December 20, 1999." The court has also stated that unless the State takes corrective action in accordance with the compliance committee's plans by December 20, 1999, the court will appoint a special master to assume control of the hospital and the State's mental health programs and services and to take all necessary corrective action, all at the State's expense.

To avoid this drastic and very costly outcome and to maintain control of its services and facilities, the State must decisively address the needs of its people with serious mental illness who are hospitalized at HSH and those who may require hospitalization in the future. The State must bring its services into conformance with standards of best practice consistent with the national trend toward providing a continuum of care in a variety of settings. From the perspective of both cost control and quality of service, it is clear both from the experience of other jurisdictions and from HSH's own struggles that the best approach is to provide certain necessary services through public or private providers in the community. Studies further find that most persons with mental illness should remain in their communities because treatment is usually most effective in community settings.

The department of health must reconfigure the functions of the current HSH within a comprehensive community-based program of mental health treatment, rehabilitation, and housing services, including appropriately secure settings for those who remain a danger to others. The heightened level of acuity and services needed by individuals hospitalized at HSH and by individuals who otherwise would be admitted to the hospital are appropriately provided through public or private contracts in the community. Because the private sector is already capable of furnishing some care that meets the standards required by CRIPA, it makes sense for the State to avail itself of those services. In this manner, the State may avoid both losing control over its mental health services system and incurring the considerable and uncontrollable expense of a federally-appointed master.

The purpose of this Act is to:

(1) Transition HSH to a secure psychiatric rehabilitation facility for individuals who require intensive therapeutic treatment and rehabilitation, including appropriate acute care services;

(2) Authorize the director of health to privatize functions currently performed at HSH as appropriate to the clinical needs of the population served in the least restrictive setting; and

(3) Authorize the department of health to provide for comprehensive community-based programs and services for individuals discharged from HSH in accordance with this Act or individuals who might otherwise have been admitted to HSH. These programs, services, and individuals shall be reviewed and monitored by the department of health.

SECTION 2. Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§334-A Contracts for facilities and services.** (a) The director may contract with any person for:

(1) The development or operation of private in-state psychiatric facilities;

(2) The placement of patients in existing private or public psychiatric facilities; and

(3) The provision of:

(A) Secure psychiatric rehabilitation services;
(B) Crisis intervention and stabilization services;
(C) Intensive treatment and wraparound services;
(D) Diversion services;
(E) Special treatment facilities or therapeutic living programs as defined in section 334-1;
(F) Case management services;
(G) Housing services; and
(H) Other mental health treatment and rehabilitation services.

(b) The department may operate or contract for a secure psychiatric rehabilitation program for individuals who require intensive therapeutic treatment and rehabilitation in a secure setting. The services authorized by this section shall be for persons:

(1) Involuntarily hospitalized under this chapter for whom the services cannot be reimbursed, covered, or provided by an insurer, plan, or other person;
(2) Committed to the custody of the director under chapter 704; and
(3) Appropriately hospitalized under chapter 704 or 706.

The director shall be responsible for the appropriate placement of all persons placed in facilities or services contracted for or operated by the director under paragraphs (1) through (3).

Any such person placed in a facility or services contracted for or operated by the director who leaves or remains away from the facility or services, without permission, may be apprehended and returned to the facility or services by any employee of the department or by any police officer without any warrant or further proceeding.

(c) The department shall:

(1) See that patients who receive services under contract or provided directly by the department pursuant to subsection (a) receive the care and treatment for which the department has contracted or for which appropriate services are provided directly by the department;
(2) Make periodic reviews of the records of each person committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706;
(3) In suitable cases, discharge or place on authorized absence persons committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706; and
(4) Keep a medical record of each person committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706."

SECTION 3. Section 334-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of health within the limits of available funds within the designated programs, shall promote and provide for the establishment and operation of a community-based mental health system responsive to the needs of persons of all ages, ethnic groups, and geographical areas of the State, reflective of an appropriate distribution of resources and services, and monitored and evaluated in terms of standards, goal attainment, and outcomes. The elements of the system shall be defined by departmental rules recognizing the need for at least the following services:

(1) Informational and educational services to the general public and to lay and professional groups;

(2) Collaborative and cooperative services with public and private agencies and groups for the prevention and treatment of mental or emotional disorders and substance abuse and rehabilitation of patients;
(3) Consultation services to the judiciary, to educational institutions, and to health and welfare agencies;
(4) Case management, outreach, and follow-up services;
(5) Emergency crisis and noncrisis intervention services accessible to residents of all service areas;
(6) Community-based, relevant, and responsive outpatient services;
(7) Community residential care comprising a comprehensive range of small, homelike, and appropriately staffed treatment and rehabilitation facilities;
(8) Short-term psychiatric [hospitalization] treatment, preferably in facilities where access to other health and medical services are readily available;
(9) Intensive psychiatric [hospitalization] treatment for patients in need of long-term, highly structured, or highly specialized care and treatment under section 334-A, and provision of appropriate community resources;
(10) Training programs, activities, and staffing standards for the major mental health disciplines and ancillary services; and
(11) Rehabilitative services for hospital and community-based individuals who have experienced short- or long-term mental or emotional disorders and substance abuse."

SECTION 4. Section 334-4, Hawaii Revised Statutes, is amended to read as follows:

"**§334-4 Personnel for mental health program.** The director shall appoint professional and nonprofessional staff as the director deems necessary to carry out the state mental health program and for which appropriations are available. Positions for psychiatrists are exempted from chapters 76 and 77. The director may employ psychiatrists as needed by the department on a contractual basis, subject to the approval of the governor. The director may appoint an administrator, three associate [hospital] administrators, a director of psychosocial rehabilitation, a chief of the department of nursing, a risk manager, a patients' rights advisor, and a facilities plant engineer for the state hospital or a secure psychiatric rehabilitation facility established pursuant to [section 334-31] this chapter and these positions shall be exempt from chapters 76 and 77."

SECTION 5. Section 334-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Every person hospitalized at a psychiatric facility or receiving treatment services through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State, or pursuant to contract with the director under section 334-A, shall be liable for the expenses attending their reception, maintenance, and treatment and any property not exempt from execution belonging to the person shall be subject to sequestration for the payment of the expenses. Every parent or legal guardian of a patient who is a minor and every spouse or reciprocal beneficiary of a patient shall be liable for the expenses attending the reception, maintenance, and treatment of that minor child or spouse or reciprocal beneficiary who is hospitalized at a psychiatric facility or receiving treatment through a community mental health center under the

jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State[.], or pursuant to contract with the director under section 334-A."

SECTION 6. Section 334-74, Hawaii Revised Statutes, is amended to read as follows:

"**§334-74 Transfer of residents of correctional facilities.** If any resident of a state correctional facility is in need of [hospital] acute psychiatric treatment for [a primary diagnosis of] mental illness, the director of public safety or the officer in charge of the correctional facility may file with the director [of health] an application for the transfer of the resident to [the state hospital,] a facility operated by the department of health or at which the director of health contracts for services, together with the certificate of a psychiatrist or psychologist employed by [either] the department [of health, or the department of public safety] showing the need for [hospital] such treatment, and, upon approval of the application by the director [of health], the official having custody of the resident shall transfer the resident to the [state hospital] facility operated by the department or at which the director contracts for care and treatment. The official effecting the transfer of the resident shall keep the [administrator of the state hospital] director informed of the maximum period of commitment of the resident to the director of public safety, and, if the continued [hospitalization] care of the resident beyond the expiration of the period is deemed necessary, the [administrator of the state hospital] director shall institute the [admission] procedures required to detain the resident as a patient notwithstanding the resident's release from the state correctional facility; provided that a judicial hearing pursuant to sections 334-60.2 to 334-60.7 be held by the same circuit court that sentenced the resident. In the event that discharge from the [hospital] facility operated by the department or at which the director contracts for services occurs before the expiration of the maximum period of commitment or confinement, the resident shall be returned to the appropriate state correctional facility.

As used in this section, "resident" means any person serving a sentence in a state correctional facility or any child or minor detained in a state correctional facility."

SECTION 7. Section 334-103, Hawaii Revised Statutes, is amended to read as follows:

"**§334-103 Program elements.** The following shall be the program elements of the system. These shall be designed to provide, at every level, alternatives to institutional settings. Applicants applying to operate program elements shall show how each of these elements works with the current programs in the community the facility will serve. Applicants may apply for operation under the following program elements:

(1) A short-term crisis residential alternative to hospitalization for individuals experiencing an acute episode or situational crisis. The program shall be available for admissions twenty-four hours a day, seven days a week. The primary focus of this element shall be on reduction of the crisis, stabilization, diagnostic evaluation, and assessment of the person's existing support system, including recommendations for referrals upon discharge. This service in the program shall be designed for persons who would otherwise be referred to an acute inpatient psychiatric unit;

(2) A long-term residential treatment program for clients who would otherwise be living marginally in the community with little or no service support, and who would return many times to the hospital for treatment. It also will serve those who are referred to, and maintained in, state [hospitals] facilities or nursing homes, or private or public facilities or programs under contract with the director pursuant to section 334-A, because they require long-term, intensive support. This service shall be designed to provide a rehabilitation program for the so-called "chronic" patient who needs long-term support in order to develop independent living skills. This program goes beyond maintenance to provide an active rehabilitation focus for these individuals;

(3) A transitional residential program designed for persons who are able to take part in programs in the general community, but who, without the support of counseling, as well as the therapeutic community, would be at risk of returning to the hospital. These programs may employ a variety of staffing patterns and are for persons who are expected to move toward a more independent living setting. The clients shall be expected to play a major role in the functioning of the household, and shall be encouraged to accept increasing levels of responsibility, both in the residential community, and in the community as [[]a[]] whole. Residents are required to be involved in daytime activities outside of the facility which are relevant to their personal goals and conducive to their achieving more self-sufficiency; or

(4) A semisupervised, independent, but structured living arrangement for persons who do not need the intensive support of the system elements of paragraph (1), (2), or (3), but who, without some support and structure, are at risk of requiring hospitalization. The small cooperative housing units shall function as independent households with direct linkages to staff support in case of emergencies, as well as for regular assessment and evaluation meetings. Individuals may use satellite housing as a transition to independent living, or may remain in this setting indefinitely in order to avoid the need for more intensive settings. This element is for persons who only need minimum professional or paraprofessional support in order to live in the community. These units should be as normative as the general living arrangements in the communities in which they are developed."

SECTION 8. Chapter 334, part III, Hawaii Revised Statutes, is repealed.

SECTION 9. Any permanent employee of the department of health who is not exempt from civil service under section 76-16, Hawaii Revised Statutes, and who is transferred to a new or different position because of a contract made by the director of health pursuant to the authority conferred by section 2 of this Act, shall be a "covered employee" under part IV of Act 230, Session Laws of Hawaii 1998, and may elect to participate in any applicable voluntary severance package offered by the State. In the event such an employee obtains continued employment in another position, the employee, position, and appropriated salary may be transferred to another department or another program within the department of health.

SECTION 10. All appropriations heretofore made to or held by the department of health to compensate an employee transferred to another department or to another program of the department of health, shall be transferred to the program or department to which the employee is transferred.

SECTION 11. In codifying the new section added to chapter 334, Hawaii Revised Statutes, by section 2 of this Act, the Revisor of Statutes shall substitute the appropriate section number for the letter used in the section designation of the Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 13. This Act shall take effect upon its approval; provided that section 8 shall take effect on July 1, 2000.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 120 H.B. NO. 1664

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§321- Hospital and medical facilities special fund; deposits; expenditures.** (a) There is established within the department of health, to be administered by the department of health, the hospital and medical facilities special fund into which shall be deposited all moneys collected under section 321-11.5(b).

(b) Moneys in the special fund shall be expended by the department to assist in offsetting program expenses of the department's hospital and medical facilities branch."

SECTION 2. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§323D- State health planning and development special fund; created; deposits; expenditures; fees.** (a) There is established within the state treasury, to be administered by the state health planning and development agency, the state health planning and development special fund into which shall be deposited all moneys collected under chapter 323D.

(b) Moneys in the special fund shall be expended by the state health planning and development agency to assist in offsetting program expenses of the agency.

(c) The agency shall adopt rules in accordance with chapter 91 to establish reasonable fees for the purposes of this chapter."

SECTION 3. Section 321-11.5, Hawaii Revised Statutes, is amended to read as follows:

"**§321-11.5 Establishment of fees.** (a) The department of health, by rules adopted pursuant to chapter 91, may establish reasonable fees for [facilities seeking licensure or certification by the department for] the issuance or renewal of licenses, permits, variances, and various certificates required by law or by the department's rules. The fees may include the cost of related examinations, inspections, investigations, and reviews.

(b) All fees paid and collected [under] pursuant to this section and rules adopted in accordance with chapter 91 from facilities seeking licensure or certification by the department, including hospitals, nursing homes, home health agencies, intermediate care facilities for the mentally retarded, freestanding outpatient surgical facilities, laboratories, adult residential care homes, developmental disability domiciliary homes, and special treatment facilities, shall be deposited into the hospital and medical facilities special fund created under section 321- . Any other entities required by law to be licensed by the department shall also be subject to reasonable fees established by the department by rules adopted in accordance with chapter 91.

(c) Other than the fees collected under subsection (b), all other fees collected under this section and section 321-15 shall be deposited into the environmental health education fund established under section 321-27."

SECTION 4. Section 321-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established within the department of health an environmental health education fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, various certificates, variances, investigations, and reviews, pursuant to sections [321-11.5] 321-11.5(c) and 321-15."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 121

S.B. NO. 844

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431M-1, Hawaii Revised Statutes, is amended by adding a new definition, to be appropriately inserted and to read as follows:

""Serious mental illness" means schizophrenia, schizo-affective disorder, and bipolar mood disorder, as defined in the most recent version of the Diagnostic and Statistical Manual of the American Psychiatric Association, which is of sufficient severity to result in substantial interference with the activities of daily living."

SECTION 2. Section 431M-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The covered benefit under this chapter shall not be less than thirty days of in-hospital services per year. Each day of in-hospital services may be exchanged for two days of nonhospital residential services, two days of partial hospitalization services, or two days of day treatment services. Visits to a physician, psychologist, clinical social worker, or advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty shall not be less than thirty visits per year to hospital or nonhospital facilities or to mental health outpatient facilities for day treatment or partial hospitalization services. Each day of in-hospital services may also be exchanged for two outpatient visits under this chapter; provided that the

patient's condition is such that the outpatient services would reasonably preclude hospitalization. The total covered benefit for outpatient services in subsections (b) and (c) shall not be less than twenty-four visits per year; provided that coverage of twelve of the twenty-four outpatient visits shall apply only to the services under subsection (c). The other covered benefits under this chapter shall apply to any of the services in subsection (b) or (c). In the case of alcohol and drug dependence benefits, the insurance policy may limit the number of treatment episodes but may not limit the number to less than two treatment episodes per lifetime. Nothing in this section shall be construed to limit serious mental illness benefits."

SECTION 3. Section 431M-5, Hawaii Revised Statutes, is amended to read as follows:

"[]§431M-5[] **Nondiscrimination in deductibles, copayment plans, and other limitations on payment.** (a) Deductible or copayment plans may be applied to benefits paid to or on behalf of patients during the course of treatment as described in section 431M-4, but in any case the proportion of deductibles or copayments shall be not greater than those applied to comparable physical illnesses generally requiring a comparable level of care in each policy.

(b) Notwithstanding subsection (a), health maintenance organizations may establish reasonable provisions for enrollee cost-sharing so long as the amount the enrollee is required to pay does not exceed the amount of copayment and deductible customarily required by insurance policies which are subject to the provisions of this chapter for this type and level of service). Nothing in this chapter prevents health maintenance organizations from establishing durational limits which are actuarially equivalent to the benefits required by this chapter. Health maintenance organizations may limit the receipt of covered services by enrollees to services provided by or upon referral by providers associated with the health maintenance organization.

(c) A health insurance plan shall not impose rates, terms, or conditions including service limits and financial requirements, on serious mental illness benefits, if similar rates, terms, or conditions are not applied to services for other medical or surgical conditions. This subsection shall not apply to individual or group hospital or medical service plan contracts, and nonprofit mutual benefit association and health maintenance organization health plan contracts providing coverage to employers with twenty-five or fewer employees, and government employee health benefits plans under chapter 87; and provided further that this subsection shall not apply to QUEST medical plans under the department of human services until July 1, 2002."

SECTION 4. (a) There is established, within the department of health for administrative purposes only, the Hawaii mental health insurance task force to study the financial and social implications of mandated equal mental health and substance abuse insurance coverage in Hawaii.

(b) The task force shall be comprised of the following twenty-two members:

(1) One member of the senate committee on health and human services appointed by the president of the senate;
(2) One member of the house of representatives committee on health appointed by the speaker of the house of representatives;
(3) One member from each of the following organizations and agencies appointed by the governor:
    (A) Hawaii Medical Service Association;
    (B) Kaiser Permanente Medical Care Program;
    (C) Department of human services;
    (D) Department of health;

(E) Equal Insurance Coalition;
(F) NAMI, Oahu;
(G) Hawaii Psychological Association;
(H) Chamber of Commerce of Hawaii;
(I) Hawaii Psychiatric Medical Association;
(J) Hawaii Business Health Council;
(K) Hawaii Medical Association;
(L) Mental Health Association of Hawaii;
(M) National Federation of Independent Businesses;
(N) Hawaii Nurses' Association; and
(O) Hawaii Building and Trades Council;

(4) The following members to be appointed by the task force:
(A) Two members representing mental health consumers; and
(B) One member representing small business organizations in the state;

(5) The insurance commissioner; and

(6) One member representing the University of Hawaii school of public health, with expertise in biomedical statistics or economics.

(c) The task force shall:

(1) Investigate ways to define and quantify unmet mental health and substance abuse needs in the State, and shall analyze possible outcome data collection measures in order to meaningfully measure and describe:
(A) The efficacy of mental health and substance abuse treatment in the State; and
(B) Unmet mental health and substance abuse treatment needs;

(2) Describe mental health and substance abuse coverage in the State, including deductibles, copayments, and covered illnesses and conditions;

(3) Describe the relative costs of mental illness and substance abuse coverage, and other health coverage in the State;

(4) Describe mental health and substance abuse treatment utilization in the State by adults, adolescents, and children;

(5) Produce an analysis of the needs of individuals who have exhausted their mental health or substance abuse treatment benefits;

(6) Determine the effect of mandated serious mental illness benefits parity on mental health and substance abuse services consumers, affected health plans, businesses, and other concerned parties, including a review of the experience of health plans in providing the coverage, and an assessment of any impact on costs, services provided, and services utilization; and

(7) Develop treatment and utilization guidelines for severe, biologically-based mental illnesses in addition to those covered under this Act, including, but not limited to:
(A) Major depression;
(B) Obsessive compulsive disorders;
(C) Severe panic disorders;
(D) Autism and pervasive development disorders;
(E) Multiple personality disorder (disassociative disorder);
(F) Brain damage or disfunction as defined by neuropsychological testing; and
(G) Other severe and disabling mental disorders such as severe anorexia, severe attention-deficit/hyperactivity disorder, and severe dyslexia.

(d) The task force shall perform its duties as follows:

(1) The task force shall not utilize any moneys from the general fund to support its functions. Members shall serve without compensation;

(2) A simple majority of the members of the task force shall constitute a quorum for the transaction of business, and all actions of the task force shall require the affirmative vote of a majority of the members present;

(3) The task force may hold public hearings as frequently as deemed necessary and feasible to receive testimony on issues relative to the task force's investigation; and

(4) The task force may invite participants, including the auditor or the auditor's representative, as deemed necessary to effectuate its purposes.

(e) The task force shall submit a report of its findings and recommendations to the speaker of the house of representatives, the president of the senate, and the governor no later than twenty days before the convening of the regular session of 2001, and shall be dissolved upon submittal of its report. Provided that the task force shall submit the report of its findings and recommendations concerning treatment and utilization guidelines as required under subsection (c)(7) of this section, to the speaker of the house of representatives, the president of the senate, and the governor no later than twenty days before the convening of the regular session of 2000.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1999; provided that insurance, health, or service plan contracts subject to the terms of this Act and issued or renewed after December 31, 1999, shall be amended to be consistent with this Act; and provided that this Act shall be repealed on July 1, 2005.

(Approved June 25, 1999.)

ACT 122 S.B. NO. 942

A Bill for an Act Act Relating to Hunting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 183D-4, Hawaii Revised Statutes, is amended to read as follows:

"§183D-4 Game management areas, wildlife sanctuaries, public hunting areas. (a) For the purposes of preserving, protecting, conserving, and propagating wildlife, the department [may] shall establish, maintain, manage, and operate game management areas, wildlife sanctuaries, and public hunting areas on land under its control and, as it deems desirable, [and] enter into agreements for taking control of privately owned lands for those purposes.

(b) For the purposes of this section:

"Game management area" means an area so designated by either executive order, rule, cooperative agreement, or action of the board of land and natural resources that has been set aside for the primary purpose of managing, sustaining, and enhancing habitat and populations of game mammals and/or game birds, and providing public hunting and, secondarily, other compatible uses.

"Public hunting area" means those lands designated by the board of land and natural resources as areas where the public may hunt game birds and mammals."

SECTION 2. Section 183D-4,[1] Hawaii Revised Statutes, is amended to read as follows:

"**§183D-2 Powers and duties of department.** The department shall:

(1) Manage and administer the wildlife and wildlife resources of the State;
(2) Enforce all laws relating to the protecting, taking, hunting, killing, propagating, or increasing the wildlife within the State and the waters subject to its jurisdiction;
(3) Establish and maintain wildlife propagating facility or facilities;
(4) Subject to the provisions of title 12, import wildlife for the purpose of propagating and disseminating the same in the State and the waters subject to its jurisdiction;
(5) Distribute, free of charge, as the department deems to be in the public interest, game for the purpose of increasing the food supply of the State; provided that when in the discretion of the department the public interest will not be materially interfered with by so doing, the department may propagate and furnish wildlife to private parties, upon such reasonable terms, conditions, and prices as the department may determine;
(6) Ascertain, compile, and disseminate, free of charge, information and advice as to the best methods of protecting, propagating, and distributing wildlife in the State and the waters subject to its jurisdiction;
(7) Gather and compile information and statistics concerning the area, location, character, and increase and decrease of wildlife in the State;
(8) Gather and compile information concerning wildlife recommended for release in different localities, including the care and propagation of wildlife for protective, productive, and aesthetic purposes and other useful information, which the department deems proper;
(9) Have the power to manage and regulate all lands which may be set apart as game management areas, public hunting areas, and wildlife sanctuaries;
(10) Pursuant to section 183D-65 of this chapter, destroy predators deemed harmful to wildlife; [and]
(11) Formulate, and from time to time recommend to the governor and legislature, such additional legislation necessary or desirable to implement the objectives of title 12[.]; and
(12) Preserve, protect, and promote public hunting."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

Note

1. So in original.

ACT 123

S.B. NO. 951

A Bill for an Act Relating to Employee Benefit Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 303, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§303- Limitation on liability.** The University of Hawaii and the State of Hawaii shall not be held liable for the sums deferred or the results of any investment product."

SECTION 2. Chapter 303, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

"**CHAPTER 303**
EMPLOYEES' ANNUITY AND CUSTODIAL ACCOUNT CONTRACTS"

2. By amending section 303-1, Hawaii Revised Statutes, to read:

"**§303-1 Purpose.** The purpose of this chapter is to provide the means by which employees of the department of education and the University of Hawaii may qualify for the favorable benefits of section 403(b) of the Internal Revenue Code of [1954,] 1986, as amended."

3. By amending section 303-2, Hawaii Revised Statutes, to read:

"**303-2 Contract for purchase of annuity[.] or investment in custodial account.** (a) The department of education and the University of Hawaii, on behalf of any employee of the respective institutions, may enter into a written agreement with any [such] employee to purchase for the employee [an] :

(1) An annuity contract from an insurer who holds a certificate of authority under section 431:3-201 [or who offers an]; or

(2) An annuity contract qualified under section 401(k) of the Internal Revenue Code[,] of 1986, as amended, which provides a nationwide retirement trust for a group of college or university football coaches who, due to the nature of their jobs, change employers frequently.

(b) The University of Hawaii may pay amounts to a custodial account established on behalf of the employee pursuant to section 403(b)(7) of the Internal Revenue Code of 1986, as amended."

4. By amending section 303-3, Hawaii Revised Statutes, to read:

"**303-3 [Premium withholding.] Withholding.** (a) The department of education and the University of Hawaii may also enter into an agreement under which the employer shall withhold from the salary of the employee the amount of the premiums payable on account of the annuity contract, and shall make such premium payments on behalf of the employee. The department of education and the University of Hawaii may contract with third parties to administer plans for the withholding of amounts from the salaries of their employees payable on account of annuity contracts and for making payments on their behalf. Costs for implementing and administering these plans for the University of Hawaii shall be borne by the employees maintaining annuity contracts.

(b) The University of Hawaii may also enter into an agreement under which the employer shall withhold from the salary of the employee the amount payable on account of the custodial account, and shall make the payments on behalf of the

employee. The University of Hawaii may contract with third parties to administer plans for the withholding of amounts from the salaries of their employees payable on account of custodial accounts and for making payments on their behalf. Costs for implementing and administering these plans shall be borne by the employees maintaining custodial accounts."

5. By amending section 303-4, Hawaii Revised Statutes, to read:

"**303-4 Adoption of rules.** Each employer may adopt rules to implement this chapter including[,] but not [by way of limitation,] limited to:

(1) [the] The method of filing an election to accept an adjustment in earnings and revocation of the election[,];
(2) [the] The effective date of an election[,];
(3) [changes] Changes in the amount of the adjustment in earnings[,]; and
(4) [selection] Selection of the insurance company or companies from which the annuity contracts are to be purchased[.] or to which payments into a qualified custodial account are to be made."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect on January 1, 2000.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 124 S.B. NO. 1049

A Bill for an Act Relating to Foster Board Allowances for Students.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-17.4, Hawaii Revised Statutes, is amended to read as follows:

"**§346-17.4 Foster board allowances for students.** (a) Any eligible foster child shall be eligible for foster board allowances after reaching the age of majority and the foster board payments for that person shall be paid to the person's foster parents, provided that:

(1) The person is twenty-one years old or younger; [and]
(2) The person is attending or has been accepted to attend an accredited institution of higher learning on a full-time basis[; and], or on a part-time basis for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate; and
(3) The person has continued to reside in the foster home wherein the person reached the age of majority, or has continued to be accepted as a member of the foster family and be under the guidance and support of the foster family.

(b) Reimbursement to foster parents for the former foster child's maintenance cost up to the maximum allowable board amount shall be made retroactive to the person's entry into an accredited institution of higher learning on a full-time basis, but no earlier than July 1, 1987[.], or on a part-time basis for the first academic year, but no earlier than July 1, 1999.

(c) Foster board allowances may be applied to costs incurred in undertaking full-time studies or part-time studies for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate, at an institution of higher learning.

(d) The department's standards relating to income resources of the foster child shall be applicable to this section."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved June 25, 1999.)

ACT 125 S.B. NO. 1082

A Bill for an Act Relating to the Bureau of Conveyances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§501- Fees received at the bureau of conveyances.** Notwithstanding any other law to the contrary, of the fees received at the bureau of conveyances, the registrar of conveyances shall deposit to the credit of the state general fund $23 for each document recorded and shall deposit the remaining balance and all fees other than the special mortgage recording fee established pursuant to section 431P-16 and conveyance tax collected pursuant to section 247-1 to the credit of the bureau of conveyances special fund established under section 502- ."

SECTION 2. Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§502- Bureau of conveyances special fund.** (a) There is established in the state treasury the bureau of conveyances special fund, into which shall be deposited the revenues remitted pursuant to sections 501- and 502-25, interest earnings, grants, donations, and appropriations from the legislature that shall be held separate and apart from all other moneys, funds, and accounts in the state treasury.

(b) Moneys in the bureau of conveyances special fund shall be used by the bureau of conveyances for the following purposes:

(1) Planning, design, construction, and acquisition of equipment, furnishings, and software necessary for the development of the recording system described in this chapter and chapter 501;
(2) Operating, maintaining, and improving the recording system described in this chapter and chapter 501 or any other purpose deemed necessary by the bureau of conveyances for the purpose of planning, improving, developing, operating, and maintaining the recording system described in this chapter and chapter 501;
(3) Permanent and temporary staff positions for the purposes of this chapter and chapter 501; and
(4) Administrative costs for the purposes of this chapter and chapter 501."

SECTION 3. Section 502-25, Hawaii Revised Statutes, is amended to read as follows:

"**§502-25 Fees.** (a) Except when otherwise provided, fees for services rendered under this chapter shall be established by rules adopted by the department of land and natural resources, pursuant to chapter 91.

(b) Notwithstanding any other law to the contrary, of the fees received at the bureau of conveyances, the registrar of conveyances shall deposit to the credit of the state general fund $23 for each document recorded and shall deposit the remaining balance and all fees other than the special mortgage recording fee established pursuant to section 431P-16 and conveyance tax collected pursuant to section 247-1 to the credit of the bureau of conveyances special fund established under section 502- .

[(b)] (c) For recordation of the document of which the United States, State of Hawaii, or any county of the State of Hawaii[,] is the grantee, no fees shall be charged."

SECTION 4. Section 502-27, Hawaii Revised Statutes, is amended to read as follows:

"**[]§502-27[] Charges.** [The registrar may authorize any person or agency to use original microfilms of documents recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court for the purpose of making duplicates of such microfilms. A charge of two cents per frame for each duplicate film shall be paid to the State; provided that no such charge shall be assessed against any agency of the State of Hawaii or counties thereof.

In addition all costs for duplicating said microfilms shall be borne by the person or agency requesting the use of the microfilms.

All moneys received by the registrar under this section shall be deposited in the general fund of the State.]

(a) Except when otherwise provided, fees for the use of microfilms of documents recorded in the bureau of conveyances for the purpose of making duplicates shall be established by rules adopted by the department of land and natural resources pursuant to chapter 91.

(b) Frame charges for duplicating microfilm shall not be assessed against any agency of the State or counties thereof."

SECTION 5. Act 203, Session Laws of Hawaii 1997, is repealed.

SECTION 6. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the bureau of conveyances equipment modernization special fund as of the close of business on June 30, 1999, to the credit of the bureau of conveyances special fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect on June 29, 1999, except that sections 1, 3, 4, and 5 shall take effect on July 1, 1999.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 126

S.B. NO. 1102

A Bill for an Act Relating to the Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to transfer the responsibility for funding the annual audit of the public employees health fund from the comptroller to the health fund.

SECTION 2. Section 87-28, Hawaii Revised Statutes, is amended to read as follows:

"**§87-28 Other powers.** In addition to the power to administer the fund, the board of trustees may:

(1) Collect, receive, deposit, withdraw, and invest money [in] on behalf of the fund;
(2) Appoint an administrator and staff necessary to carry out this chapter, subject to the limitations of available appropriations and chapters 76 and 77 and section 78-1;
(3) Make payments of periodic charges and pay for reasonable expenses incurred to [carry]:
    (A) Perform financial audits of the fund and claims audits of its insurance carriers; or
    (B) Carry out the purposes of the fund;
    or
(4) Require any department, agency, or employee of the State and county to furnish information to the board to carry out the purposes of this chapter."

SECTION 3. Section 87-29, Hawaii Revised Statutes, is amended to read as follows:

"**§87-29 Other duties.** The board of trustees shall:

(1) Authorize the director of finance to make periodic charges and payments from the fund only upon vouchers countersigned by the chairperson and such other person as may be designated by the board of trustees;
(2) Maintain accurate records and accounts of all financial transactions of the fund which shall be audited annually and summarized in an annual report by the [state] comptroller[;]. The audit costs shall be the responsibility of the fund and shall be paid from the employers' portion of the fund's reserves;
(3) Maintain suitable and adequate records to carry out the purpose of the fund; and
(4) Procure a fidelity bond of a reasonable amount for the chairperson and any other person authorized to handle money of the fund."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

ACT 127 S.B. NO. 1127

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§431: Assessments of health insurers.** (a) The assessments shall be used to defray any administrative costs, including personnel costs, associated with health insurance regulation, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys from assessments to employ, without regard to chapters 76 and 77, necessary professional, technical, administrative, and support personnel to implement and carry out the purposes of title 24 as it relates to health insurance.

(b) Beginning with fiscal year 2000-2001, and including fiscal year 2001-2002, each mutual benefit society under article 1 of chapter 432, health maintenance organization under chapter 432D, and any other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A, shall deposit with the commissioner by July 1 of each year an assessment of $10,000 for the first seventy thousand private, nongovernment members the entity covers and an additional assessment on a pro rata basis to be determined and imposed by the commissioner for covered members exceeding seventy thousand; provided that in the third year and each year thereafter, assessments shall be borne on a pro rata basis. The aggregate annual assessment shall not exceed $1,000,000. The assessment shall be credited to the insurance regulation fund. If assessments are increased, the commissioner shall provide to any organization or entity subject to the increased assessment, justification for the increase.

(c) Moneys credited to the insurance regulation fund that are not used for health insurance regulation or general administration purposes shall not revert to the general fund nor shall be used for other purposes.

(d) The commissioner may suspend any assessment made against any mutual benefit society under article 1 of chapter 432, health maintenance organization under chapter 432D, and any other entity offering or providing health benefits or services under the regulation of the commissioner if the commissioner determines that the entity may reach insolvency or other financial difficulty if the assessment is made against the entity."

SECTION 2. Upon approval of this Act, each mutual benefit society under article 1 of chapter 432, Hawaii Revised Statutes, health maintenance organization under chapter 432D, Hawaii Revised Statutes, and any other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A of chapter 431, Hawaii Revised Statutes, shall pay to the insurance commissioner by September 30, 1999, a one-time assessment in an aggregate amount not to exceed $1,000,000 to be credited to the insurance regulation fund; provided that the insurance commissioner may spread the total assessment required over several smaller assessments.

SECTION 3. There is appropriated the sum of $1,000,000 or so much thereof as may be necessary for fiscal year 1999-2000 and the sum of $1,000,000 or so much thereof as may be necessary to be deposited into the insurance regulation fund to carry out the purposes of this Act.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 4. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect after S.B. No. 1129[2] in its final form, 1999 Regular Session, becomes an Act.

(Approved June 25, 1999.)

Notes

1. Edited pursuant to HRS §23G-16.5.
2. Act 163.

ACT 128 S.B. NO. 1131

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:2-307, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) Each authorized insurer shall pay, on or before August 15, [1993,] 1999, and each year thereafter, on or before July 1, a sum of [$550] $800 to the commissioner to be credited to the insurance examiners revolving fund."

SECTION 2. Act 190, Session Laws of Hawaii 1994, as amended by Acts 61 and 232, Session Laws of Hawaii 1995, and by Act 358, Session Laws of Hawaii 1997, is amended by amending section 10 to read as follows:

"SECTION 10. This Act shall take effect on June 21, 1994[; provided that on June 30, 2000, sections 1 through 4 of this Act and section 431:2-307, Hawaii Revised Statutes, shall be repealed, and sections 431:3-302, 431:5-307, and 431:19-107, Hawaii Revised Statutes, are reenacted in the form in which they read on June 20, 1994]."

SECTION 3. Act 61, Session Laws of Hawaii 1995, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval[; provided that on June 30, 1999, the director of finance shall transfer to the credit of the state general fund all unexpended or unencumbered balances remaining in the insurance examiners revolving fund]."

SECTION 4. Act 232, Session Laws of Hawaii 1995, is amended by amending section 20 to read as follows:

"SECTION 20. This Act shall take effect upon its approval; [provided that on June 30, 2000, the director of finance shall transfer to the credit of the state general fund all unexpended or unencumbered balances remaining in the insurance

examiners revolving fund; and] provided that sections 5 through 18 shall take effect on July 1, 1995."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)

ACT 129 S.B. NO. 1145

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (i) to read:

"(i) The functions and authority previously exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as constituted are transferred to the department of commerce and consumer affairs established by this chapter. [The director of commerce and consumer affairs also shall be the commissioner of securities.]"

2. By amending subsection (l) to read:

"(l) Any law to the contrary notwithstanding, the director of commerce and consumer affairs may:

(1) Establish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, licensure, or any other administrative process for all laws within the jurisdiction of the department. [The fee assessed shall bear a reasonable relationship between the revenue derived from the fee and the cost or value of services rendered.] Amendments to fee assessments shall be made pursuant to chapter 91;

(2) Assess fees for copies in any form of media of the computerized records of the business registration division or for electronic access to the computerized information on a one-time or on[1] going basis. The fees charged for the copies or access may include billing service fees, network usage fees, and computer consultant fees. In adopting these fees, the director shall take into account the intent to make the division self-supporting. To this end, the fees may reflect the commercial value of the service or information provided. In the case of requests for records by a nonprofit organization, the director may reduce or waive the fees. This paragraph shall control in any instance where there is a conflict between this paragraph and any other statute; and

(3) Assess fees for copies of consumer and business educational publications prepared or issued by the department. Fees collected under this paragraph shall be deposited into the compliance resolution fund under subsection (o). [The fees assessed shall bear a reasonable relationship between the revenue derived from the fee and the cost of producing the materials issued.] In the case of requests for copies by a nonprofit organization, the director may reduce or waive the fees. For purposes of this paragraph, "consumer and business educational publications" does not include copies of statutes or administrative rules.

The fees collected by the professional and vocational licensing division and the business registration division shall be deposited into the compliance resolution fund under subsection (o) [and shall be used to defray administrative costs, including personnel costs associated with these two programs and costs incurred by supporting offices and divisions].

The director may appoint program specialists, not subject to chapters 76 and 77, to assist with the activities of the professional and vocational licensing division."

3. By amending subsection (o) to read:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, [the moneys in the fund shall consist of annual fees collected under this subsection, section 514A-95, penalties or fines assessed as a result of action brought by department personnel, and penalties, fines, or reimbursement of costs or attorneys' fees assessed as a result of actions brought for violations of chapters 480 and 487.] all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, and the special handling fund, section 415-128, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, the insurance examiners' revolving fund, section 431:2-307, the motor vehicle insurance administration revolving fund, section 431:10C-115.5, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 444-29, and

the public broadcasting revolving fund, section 314-13. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. [In addition,] Any law to the contrary notwithstanding, the moneys in the fund shall [defray all other administrative costs, including personnel costs of operating the regulated industries complaints office and costs incurred by supporting offices and divisions.] be used to fund the operations of the department with the exception of costs related to the Hawaii public broadcasting authority. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

(1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
(2) Any person subject to chapter 485 has complied with that chapter;
(3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
(4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
(5) Any person subject to chapter 467B has complied with that chapter[.]; and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read:

"**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

(1) Special summer school and intersession fund under section 302A-1310;
(2) School cafeteria special funds of the department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
(6) Special funds established by section 206E-6;
(7) Housing loan program revenue bond special fund;
(8) Housing project bond special fund;
(9) Aloha Tower fund created by section 206J-17;
(10) Domestic violence prevention special fund under section 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;
(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;
(16) Hawaii health systems corporation special funds;

(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section [[]201B-11[]]; [and]
(19) Department of commerce and consumer affairs' special funds; and
(20) Compliance resolution fund established under section 26-9;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 3. Section 36-30, Hawaii Revised Statutes is amended by amending subsection (a) to read:

"(a) Each special fund, except the:
(1) Transportation use special fund established by section 261D-1;
(2) Special summer school and intersession fund under section 302A-1310;
(3) School cafeteria special funds of the department of education;
(4) Special funds of the University of Hawaii;
(5) State educational facilities improvement special fund;
(6) Special funds established by section 206E-6;
(7) Aloha Tower fund created by section 206J-17;
(8) Domestic violence prevention special fund under section 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;
(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital special fund established under section 206X-10.5 and the convention center operations special fund established under section 206X10.6;
(15) Hawaii health systems corporation special funds; [and]
(16) Tourism special fund established under section [[]201B-11[]]; and
(17) Compliance resolution fund established under section 26-9;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 92-24, Hawaii Revised Statutes, is amended to read as follows:

"**§92-24 Directors of finance and commerce and consumer affairs; fees.** The director of finance and the director of commerce and consumer affairs each shall charge the following fees:
(1) For administering any oath, $1;
(2) For preparing every photostat copy of any document on record in the director's office, 50 cents per page or portion thereof;
(3) For preparing every typewritten copy of any document on record in the director's office, 50 cents per page or portion thereof;

(4) For preparing a certificate of compliance, $5 for the original certificate, and $1 for each additional copy thereof, of which $4 from each certificate and 75 cents of each additional copy shall be deposited in the [special fund referred to in section 415-128, and the balance deposited to the general fund of the State;] compliance resolution fund established pursuant to section 26-9(o);
(5) For comparing any document submitted for certification, 15 cents per page or portion thereof;
(6) For certifying any document on record in the director's office, 25 cents for each certification;
(7) For all other acts and duties, the fees of which are not otherwise provided for, such charges as each may from time to time prescribe."

SECTION 5. Section 207-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The statement filed pursuant to this section shall be accompanied by a registration fee of $30. The registration fee shall be nonrefundable even in the event of a denial. In addition, foreign lenders who are currently registered pursuant to this chapter shall pay an annual renewal fee of $30 in order to maintain the immunities and privileges granted in this section. The annual renewal fee shall be due on or before June 30, of each calendar year. The failure to submit the annual renewal fee as required shall result in the automatic cancellation of any statements filed pursuant to this section but shall not retroactively affect or impair any of the immunities provided by this part. In the commissioner's discretion, the time period for filing of a renewal fee may be extended for an additional thirty days beyond June 30 of each calendar year if good cause exists for such an extension. The registration fee, annual renewal fee, and any other charge or fee assessed under this part shall be deposited into the [financial institution examiners' revolving] compliance resolution fund established under section [412:2-109.] 26-9(o)."

SECTION 6. Section 269-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury a public utilities commission special fund to be administered by the public utilities commission. The proceeds of the fund shall be used by the public utilities commission and the division of consumer advocacy of the department of commerce and consumer affairs for all expenses incurred in the administration of chapters 269, 271, 271G, and 486J; provided that the expenditures of the public utilities commission shall be in accordance with legislative appropriations. On a quarterly basis, an amount not exceeding thirty per cent of the proceeds remaining in the fund after the deduction for central service expenses, pursuant to section 36-27, shall be allocated by the public utilities commission to the division of consumer advocacy[;] and deposited in the compliance resolution fund established pursuant to section 26-9(o); provided that all moneys allocated by the public utilities commission from the fund to the division of consumer advocacy shall be in accordance with legislative appropriations."

SECTION 7. Section 412:2-105, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

"(c) The commissioner shall bill the affected financial institution for examination fees and expenses as soon as feasible after the close of the examination or investigation. The affected financial institution shall pay the division of financial institutions within thirty days following the billing. All such payments shall be deposited to the [financial institution examiners' revolving] compliance resolution fund[.] established pursuant to section 26-9(o). All disputes relating to these billings

between the affected financial institution and the commissioner shall be resolved in accordance with the procedures for contested cases under chapter 91.

(d) The commissioner, by rules adopted in accordance with chapter 91, may set reasonable fee amounts to be collected by the division in connection with its regulatory functions, including, without limitation, any fees for renewals, applications, licenses, and charters. Unless otherwise provided by statute, all such fees shall be deposited into the [financial institution examiners' revolving] compliance resolution fund[.] established pursuant to section 26-9(o).

(e) A Hawaii financial institution that fails to make a payment required by this section shall be subject to an administrative fine of not more than $250 per day for each day it is in violation of this section, which fine, together with the amount due under this section, may be recovered pursuant to [the provisions of] section 412:2-611 and shall be deposited [to] into the [financial institution examiners' revolving] compliance resolution fund[.] established pursuant to section 26-9(o)."

SECTION 8. Section 412:2-109, Hawaii Revised Statutes, is amended to read as follows:

"**§412:2-109 [Financial] Compliance resolution fund; financial institution [examiners' revolving fund and appointment of] examiners.** (a) [There is established in the state treasury a separate fund designated as the financial institution examiners' revolving fund.] Any law to the contrary notwithstanding, fees and fines collected by the commissioner of financial institutions shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).

(b) The commissioner may appoint financial institution examiners, not subject to chapters 76 and 77, who shall examine the affairs, transactions, accounts, records, documents, and assets of financial institutions. The commissioner also may appoint administrative support personnel, not subject to chapters 76 and 77, who shall assist and support the examiners. The commissioner may pay the salaries of the financial institution examiners and administrative support personnel from the [financial institution examiners' revolving] compliance resolution fund.

(c) The compliance resolution fund also may be used to reimburse financial institution examiners and administrative support personnel for the following expenses necessarily incurred on account of an examination and the education and training of financial institution examiners and administrative support personnel:

(1) Actual travel expenses in amounts customary for these expenses and approved by the commissioner;
(2) A reasonable living expense allowance at a rate customary for these expenses and approved by the commissioner; and
(3) Any fee or tuition necessary to attend educational and training conferences, workshops, seminars, and any similar events of this nature.

(d) The compliance resolution fund also may be used for other expenses relating to examinations of financial institutions and administrative costs, including personnel costs of the division and costs incurred by supporting offices and divisions.

(e) All persons receiving any reimbursement or compensation from the [financial institution examiners' revolving] compliance resolution fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred. Persons shall not receive or accept any additional compensation on account of an examination. In the case of an examination, any reimbursement or compensation made by the fund and approved by the commissioner shall be charged to the financial institution being examined by the commissioner and all receipts shall be credited to the fund.

(f) Moneys in the [financial institution examiners' revolving] compliance resolution fund shall not revert to the general fund.

[(g) Before August 16, 1995, and thereafter before July 2, 1996, each financial institution subject to examination by the commissioner shall pay a sum of $250 plus $50 for each office, agency, and branch office maintained by the financial institution, to the commissioner to be credited to the financial institution examiners' revolving fund.

(h) Before July 2, 1997, and each] (g) Each year [thereafter] before July 2, each financial institution subject to examination by the commissioner shall pay a sum of $500 plus $100 for each office, agency, and branch office maintained by the financial institution, to the commissioner to be credited to the [financial institution examiners' revolving] compliance resolution fund. The commissioner may establish, increase, decrease, or repeal this fee when necessary pursuant to rules adopted in accordance with chapter 91."

SECTION 9. Section 412:2-315, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The commissioner may assess and collect from all affected Hawaii financial institutions their ratable share of the administrative costs incurred by the division in its administration of any emergency orders issued under this section. Administrative costs assessed under this section shall be deposited into the [financial institution examiners' revolving] compliance resolution fund established under section [412:2-109.] 26-9(o). The determination of the commissioner of which Hawaii financial institution or institutions are "affected" and the proration method the commissioner chooses to employ in making assessments under this section may be appealed to the circuit court as provided in chapter 91 by any Hawaii financial institution aggrieved thereby."

SECTION 10. Section 412:2-611, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

"§412:2-611 Action to recover administrative fines; deposit to [revolving] compliance resolution fund."

2. By amending subsection (b) to read:

"(b) All administrative fines collected under authority of this chapter shall be deposited in the [financial institution examiners' revolving] compliance resolution fund established under section [412:2-109.] 26-9(o)."

SECTION 11. Section 415-128, Hawaii Revised Statutes, is amended to read as follows:

"§415-128 Fees for filing documents and issuing certificates. The following fees shall be paid to the director upon the filing of corporate documents:

(1) Articles of incorporation, $100;
(2) Articles of amendment, $50;
(3) Restated articles of incorporation, $50;
(4) Articles of merger or consolidation, $200;
(5) Articles of merger (subsidiary corporation), $100;
(6) Articles of dissolution, $50;
(7) Annual report of domestic and foreign corporations organized for profit, $25;

(8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, $50;
(9) Application for a certificate of authority, $100;
(10) Application for a certificate of withdrawal, $50;
(11) Reservation of corporate name, $20;
(12) Transfer of reservation of corporate name, $20;
(13) Good standing certificate, $25;
(14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, $50;
(15) Special handling fee for review of articles of merger or consolidation, $150;
(16) Special handling fee for certificates issued by the department, $20 per certificate; and
(17) Special handling fee for certification of documents, $1 per page.

All [special handling fees shall be credited to the special fund established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.] fees collected under this section shall be managed in accordance with section 26-9(l).

The director [shall] may adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91 [to ensure that the proceeds, together with all other receipts of the special fund under this section do not surpass the annual operating costs of the program. All unexpended and unencumbered moneys remaining on balance with the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the processing of corporate documents over the next following fiscal year shall lapse to the credit of the state general fund].''

SECTION 12. Section 415B-155, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-155 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of corporate documents:
(1) Articles of incorporation, $50;
(2) Articles of amendment, $20;
(3) Restated articles of incorporation, $20;
(4) Articles of merger or consolidation, $100;
(5) Articles of dissolution, $20;
(6) Annual report of nonprofit domestic and foreign corporations, $5;
(7) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, $20;
(8) Application for a certificate of authority, $50;
(9) Application for a certificate of withdrawal, $20;
(10) Reservation of corporate name, $20;
(11) Transfer of reservation of corporate name, $20;
(12) Good standing certificate, $20;
(13) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, $50;
(14) Special handling fee for review of articles of merger or consolidation, $150;
(15) Special handling fee for certificates issued by the department, $20 per certificate; and

(16) Special handling fee for certification of documents, $1 per page.

All [special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.] fees collected under this section shall be managed in accordance with section 26-9(l).''

SECTION 13. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

''**§425-12 Fee for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of general partnership documents:

(1) Partnership registration statement, $25;
(2) Partnership change of name statement, $25;
(3) Partnership dissolution statement, $25;
(4) Foreign general partnership registration statement, $25;
(5) Statement of change, $25;
(6) Application for certificate of withdrawal, $10;
(7) Statement of correction, $25;
(8) Reservation of name, $20;
(9) Transfer of reservation of name, $20;
(10) Annual statement for domestic or foreign general partnership, $10;
(11) Good standing certificate, $25;
(12) Any other statement, certificate, or other document for a domestic or foreign general partnership, $25;
(13) Special handling fee for review of any general partnership document, $20;
(14) Special handling fee for certificates issued by the director, $20 per certificate; and
(15) Special handling fee for certification of documents, $1 per page.

All [special handling fees shall be credited to the special fund authorized by section 415-128.] fees collected under this section shall be managed in accordance with section 26-9(l).''

SECTION 14. Section 425-169, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

''(b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:

(1) For limited liability partnerships: certificate of limited liability partnership, $100; certificate of correction, $100; change of name statement, $100; partnership dissolution statement, $100; annual statement, $100; certification of limited liability partnership, $1 a page; certificate of good standing, $100;
(2) For foreign limited liability partnerships: registration statement, $100; certificate of correction, $100; withdrawal application, $100; annual statement, $100; certification of foreign partnership, $1 a page; certificate of good standing, $100; and
(3) For any other certificate or document authorized by this part, $100.

All [special handling fees shall be credited to the special fund authorized by section 415-128. All other] fees collected under this section shall be managed in accordance with section 26-9(1).''

SECTION 15. Section 425D-1107, Hawaii Revised Statutes, is amended to read as follows:

"**§425D-1107 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of limited partnership documents:

(1) Certificate of limited partnership, $50;
(2) Any certificate of amendment, restatement, or correction, $20;
(3) Certificate of cancellation, $20;
(4) Annual statement for domestic or foreign limited partnership, $10;
(5) Any other certificate or document of domestic or foreign limited partnership, $20;
(6) Application for registration as a foreign limited partnership, $100;
(7) Any certificate of amendment or agent change for foreign limited partnership, $20;
(8) Application for certificate of withdrawal of foreign limited partnership, $20;
(9) Reservation of name, $20;
(10) Transfer of reservation of name, $20;
(11) Good standing certificate, $20;
(12) Special handling fee for review of any limited partnership document, $50;
(13) Special handling fee for certificates issued by the director, $20 per certificate; and
(14) Special handling fee for certification of documents, $1 per page.

All [special handling fees shall be credited to the special fund authorized by section 415-128.] fees collected under this section shall be managed in accordance with section 26-9(l)."

SECTION 16. Section 428-1301, Hawaii Revised Statutes, is amended to read as follows:

"**§428-1301 Fees.** The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

(1) Articles of organization, $100;
(2) Articles of amendment, $50;
(3) Restated articles of organization, $50;
(4) Articles of merger, $200;
(5) Statement of dissociation, $50;
(6) Articles of termination, $50;
(7) Application for reinstatement for administratively terminated limited liability company, $50;
(8) Annual report, $25;
(9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, $50;
(10) Statement of resignation of agent for service of process, $50;
(11) Any other statement or document of a domestic or foreign limited liability company, $50;
(12) Application for certificate of authority for foreign limited liability company, $100;
(13) Application for cancellation of authority of foreign limited liability company, $50;
(14) Reservation of name, $25;
(15) Good standing certificate, $25;
(16) Any other record not otherwise covered in this part, $50;

(17) Certified copy of any record relating to a limited liability company or foreign limited liability company, 25 cents per page, and $10 for the certificate and affixing the seal thereto;
(18) Special handling fee for review of any record other than articles of merger, $80;
(19) Special handling fee for review of articles of merger, $200;
(20) Special handling fee for certificates issued by the director not otherwise covered by this part, $10 per certificate;
(21) Special handling fee for certification of record, $1 per page; and
(22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, $50, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

All [special handling fees shall be credited to the special fund authorized by section 415-128.] fees collected under this section shall be managed in accordance with section 26-9(l).''

SECTION 17. Section 440G-15, Hawaii Revised Statutes, is amended to read as follows:

''**§440G-15 Annual fees.** (a) Each cable operator shall pay an annual fee to be determined by the director. The fees so collected under this section shall be [used to offset the costs of administering this chapter.] deposited into the compliance resolution fund established under section 26-9(o).

(b) The director shall adjust the fees assessed under this section, as necessary from time to time, [to ensure that the gross proceeds collected do not surpass the annual operating costs of the program.] pursuant to rules adopted in accordance with chapter 91.''

SECTION 18. Section 449-14, Hawaii Revised Statutes, is amended to read as follows:

''**§449-14 Fees.** The following fees shall be paid by licensed escrow depositories to the commissioner and, together with any administrative penalty or other charge assessed under this chapter, shall be deposited into the [financial institution examiners' revolving] compliance resolution fund[:] established pursuant to 26-9(o):

(1) For filing and investigation of an escrow depository's application for license, $2,000;
(2) For initial issuance and annual renewal of an escrow depository's license, $100;
(3) For initial issuance and annual renewal of a branch office license, $50; and
(4) For reissuance of a license or endorsement on the license for the change in the business address of its office, $25.

An escrow depository that fails to make a payment required by this section shall be subject to an administrative penalty of not more than $200 per day for each day it is in violation of this section.''

SECTION 19. Section 482-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

''(b) Before any person may receive a certificate of registration of a print, label, or trademark, the person shall file in the office of the director of commerce and

consumer affairs an application for the registration of the print, label, or trademark, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print, label, or trademark, and describing the goods or manufactured articles for which the print, label, or trademark is used, and stating the manner in which the print, label, or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, the person shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that the person is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by two exact copies of the print, label, trademark, service mark, or trade name. Upon filing the application, the applicant shall pay to the director a fee of $50. A special handling fee of $20 for expediting registration of a trade name, print, label, trademark, or service mark shall be assessed by the department. All special handling fees shall be credited to the [special fund authorized by section 415-128.] compliance resolution fund established under section 26-9(a).''

SECTION 20. All acts passed by the legislature during this regular session of 1999, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 21. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 22. This Act shall take effect on July 1, 1999; provided that:

(1) The amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act shall not be repealed when those sections are reenacted on July 1, 2000, pursuant to section 13 of Act 216; Session Laws of Hawaii 1997; and

(2) The amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998; and

(3) The amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act, shall not be repealed by acts subsequent to those contained in the 1998 Session Laws of Hawaii, unless:
   (A) Either section 36-27 or 36-30, Hawaii Revised Statutes, or both, are repealed in their entirety and are not in the same act reenacted in their entirety; or
   (B) The provisions added to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act are included within brackets, signifying pursuant to standard drafting conventions that the provisions are intended to be repealed.

(Approved June 25, 1999.)

Note

1. Prior to amendment hyphen appeared here.

ACT 130

S.B. NO. 1155

A Bill for an Act Relating to Reallocation of Vacant Library Positions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the public library system has effectively served the general public in various geographic locations of the State with responsible and efficient allocation of human resources as the need occurs.

In 1996, the legislature by Act 196, Session Laws of Hawaii (SLH) 1996, granted the state librarian the temporary power to reallocate vacant positions and to create temporary positions, not to exceed one year, throughout the public library system. As public library system employees retire, transfer to other departments and agencies, or leave state service positions vacancies occur at various work locations. The state librarian, under Act 196, SLH 1996, has the authority to reallocate these vacant positions to other state libraries. When no vacant positions are available, the state librarian can establish temporary positions of not more than one year to meet library staffing needs. The application of this authority has been successful in meeting the public service and staffing needs of the Hawaii State Public library system. This authority has also helped support employee satisfaction at urban, rural, remote, and new libraries.

The purpose of this Act is to extend the state librarian's temporary authority under Act 196, SLH 1996, to reallocate vacant positions and to establish temporary positions of not more than one year. This authority is still needed to provide for public library services at the right time and in the right place during the complex, time-consuming reorganization efforts currently underway.

SECTION 2. Act 196, Session Laws of Hawaii 1996, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, [1999.] 2002."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)

ACT 131

S.B. NO. 1158

A Bill for an Act Making an Appropriation for Compensation of Crime Victims.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of $1,127,025 or so much thereof as may be necessary for fiscal year 1999-2000 to be deposited into the crime victim compensation special fund.

SECTION 2. There is appropriated out of the crime victim compensation special fund the sum of $1,127,025 or so much thereof as may be necessary for fiscal year 1999-2000 for the purpose of compensating certain persons or their providers of

services pursuant to chapter 351, Hawaii Revised Statutes, by payments authorized by the crime victim compensation commission.

SECTION 3. The sums appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 25, 1999.)

ACT 132 S.B. NO. 1163

A Bill for an Act Relating to the Release of Pre-Trial Inmates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 305, Session Laws of Hawaii 1993, as amended by Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, as amended by Act 216, Session Laws of Hawaii 1996, and as amended by Act 227, Session Laws of Hawaii 1998, is amended as follows:

(1) By amending section 1 to read as follows:

"SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§353- Release of pre-trial inmates to prevent overcrowding. (a) Notwithstanding chapter 804 and any other law to the contrary and except as provided in subsection (b), the director or a designee of the director may order the release of pre-trial inmates on recognizance to prevent or relieve overcrowding when a community correctional center has reached capacity, as determined by the director. The director's order shall supersede and have the same force and effect as an order entered by a court pursuant to chapter 804. A copy of the director's order shall be filed with the court in which the charge against the pre-trial inmate is pending.

(b) No pre-trial inmate who has been:

(1) Denied bail or whose bail has been set at more than $10,000 pursuant to chapter 804;

(2) Charged with or convicted of or is on probation or parole for a serious crime, as defined in section 804-3, or for a crime involving violence against a person;

(3) Found to be mentally defective or mentally incapacitated pursuant to section [707-700;] 704-400;

(4) Convicted of three or more counts of contempt of court within the twelve month period immediately preceding the inmate's present detention;

(5) Arrested three or more times within the twelve month period immediately preceding the inmate's present detention; or

(6) Charged with a class C felony or misdemeanor offense involving risk to public safety as determined by the director or a designee of the director,

shall be eligible for release pursuant to this section.

(c) Prior to the release of any inmate pursuant to this section, the director or a designee of the director shall notify the prosecuting authority that the inmate will be released pursuant to this section.

(d) The power to release a pre-trial inmate pursuant to this section is granted solely for the purpose of managing the population of the community correctional centers and nothing in this section shall be construed as granting any person the right to be released. An order releasing a pre-trial inmate pursuant to this section shall not operate to dismiss or otherwise terminate any charges then pending against the pre-trial inmate.

(e) The State, its officers, and employees, shall not be subject to any civil liability or penalty for any error in judgment or discretion made in good faith and upon reasonable grounds in any action taken or omitted by the State, its officers, and employees, in an official capacity under this section.

(f) The director shall adopt rules in accordance with chapter 91 for the release of pre-trial inmates pursuant to this section.

§353- Terms and conditions of release; violations; sanctions. (a) A pre-trial inmate released pursuant to section 353- shall be subject to the conditions stated in section 804-7.4. In addition, the director may impose any of the conditions which a court is authorized to impose pursuant to section 804-7.1 and shall impose any conditions contained in any court order superseded by the director's order.

(b) Every pre-trial inmate released under this section shall be subject to the express condition, to be set forth in the official written notification of release, that release may be revoked by order of the director or a designee of the director in the event that the pre-trial inmate violates any terms or conditions of the release.

Upon receipt of specific information from an intake service center worker that a pre-trial inmate has violated any of the terms or conditions of the release, the director or a designee of the director may order the arrest and temporary return to custody of the pre-trial inmate for the purpose of ascertaining whether or not there is sufficient cause to warrant the revocation of the pre-trial inmate's release under section 353- . The arrest order shall state the alleged violation which gave rise to its issuance.

Upon the remanding of the pre-trial inmate into custody, hearing on the alleged violation shall be conducted promptly for the purpose of ascertaining whether or not there is sufficient cause to warrant the revocation of the pre-trial inmate's release. The pre-trial inmate shall have, with respect to the revocation hearing, those rights set forth in section 706-670(3).

If sufficient cause for the alleged violation of terms or conditions of release is found at the hearing, the director or a designee of the director may impose different or additional conditions on the pre-trial inmate's release or revoke the pre-trial inmate's release. If sufficient cause is not found, the pre-trial inmate shall be released from custody subject to all of the original terms and conditions of release.

Notice of reincarceration shall be filed with the court.''''

(2) By amending section 2 to read as follows:

''SECTION 2. No less than twenty days prior to the convening of the regular session of the legislature in each year from 1994 through [1999,] 2000, the director shall report the progress of the program, and make recommendations for further legislative action.''

(3) By amending section 4 to read as follows:

''SECTION 4. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, [1999.] 2000.''

SECTION 2. Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, as amended by Act 216, Session Laws of Hawaii

1996, and as amended by Act 227, Session Laws of Hawaii 1998, is amended as follows:

(1) By amending section 2 to read as follows:

"SECTION 2. No later than twenty days prior to the convening of the regular session in each year from 1995 through [1999,] 2000, the director shall submit a written report to the legislature on the recidivism rate of pre-trial inmates released under this program."

(2) By amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval, and shall be repealed on June 30, [1999.] 2000."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)

ACT 133 S.B. NO. 1229

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State must do more to help Hawaii's homeless to become more stable by providing assistance with health, housing, and social issues so that they may be able to obtain and retain permanent housing and maintain economic independence and self-sufficiency in the long-term. It has been recognized and accepted that programs designed to assist homeless persons are more effective and efficient when a continuum of programs is provided.

The purpose of this Act is to continue funding for homeless assistance pursuant to chapter 201G, part IV, Hawaii Revised Statutes.

SECTION 2. Act 170, Session Laws of Hawaii 1998, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect on July 1, 1998; provided that:
(1) Section 2 shall take effect on July 1, [1999;] 2001; and
(2) Section 1 shall be repealed on June 30, [1999.] 2001."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $600,000 or so much thereof as may be necessary for fiscal year 1999-2000 and $600,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the purpose of providing homeless assistance pursuant to chapter 201G, part IV, Hawaii Revised Statutes; provided that no funds shall be appropriated for the operation of a homeless shelter or facility that is provided in conjunction with the department of transportation.

SECTION 4. The sums appropriated shall be expended by the housing and community development corporation of Hawaii for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 1999; provided that section 3 shall take effect on July 1, 1999.

(Approved June 25, 1999.)

ACT 134 S.B. NO. 1274

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

PART I.

SECTION 1. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) Effective [January 1, 1993] July 1, 1999, the functions and authority heretofore exercised by the [superintendent of education] director of public safety and the department of [education] public safety relating to after hours security contracts at [its] department of education facilities, [including] except for the security functions being performed by employees of the public library system as well as the contractual security services for the libraries, shall be transferred to the department of [public safety.] education."

SECTION 2. All rights, powers, functions, and duties of the department of public safety relating to the after hour security contracts at department of education facilities shall be transferred to the department of education.

All officers and employees of the department of public safety whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon the transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure who is transferred by this Act shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 3. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of public safety relating to the functions transferred to the department of education by this Act shall be transferred with the functions to which they relate.

PART II.

SECTION 4. Section 353-16.37, Hawaii Revised Statutes, is amended to read as follows:

"[[]§353-16.37[]] **Community partnering.** Regardless of the method for funding new prison facilities, the department of public safety shall develop and implement a community partnering process to be incorporated into the request for proposal; [provided further that a] this partnering process shall include a community hearing for the purpose of soliciting community input. Further, a community benefit and enhancement package shall be developed by the department and the affected community to mitigate the negative aspects of building a [prison] correctional facility in the community[; provided further that the]. The benefit and enhancement package may include[,] but is not limited to[, infrastructure]:

(1) Infrastructure improvements[, job]:[1]
(2) Job training programs or improvements to schools and health care facilities[, social];
(3) Social programs[,]; and [other]
(4)[2] Other government functions."

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

Notes

1. So in original.
2. "(4)" should be underscored.

ACT 135 S.B. NO. 1279

A Bill for an Act Relating to the Universal Service Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the

prorated estimate of central service expenses of government in relation to all special funds, except the:

(1) Special summer school and intersession fund under section 302A-1310;
(2) School cafeteria special funds of the department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
(6) Special funds established by section 206E-6;
(7) Housing loan program revenue bond special fund;
(8) Housing project bond special fund;
(9) Aloha Tower fund created by section 206J-17;
(10) Domestic violence prevention special fund under section 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;
(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;
(16) Hawaii health systems corporation special funds;
(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section [[]201B-11[]]; [and]
(19) Department of commerce and consumer affairs' special funds; and
(20) Universal service fund established under chapter 269;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 2. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

(1) Transportation use special fund established by section 261D-1;
(2) Special summer school and intersession fund under section 302A-1310;
(3) School cafeteria special funds of the department of education;
(4) Special funds of the University of Hawaii;
(5) State educational facilities improvement special fund;
(6) Special funds established by section 206E-6;
(7) Aloha Tower fund created by section 206J-17;
(8) Domestic violence prevention special fund under section 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;
(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital special fund established under section 206X-10.5 and the convention center operations special fund established under section 206X-10.6;

(15) Hawaii health systems corporation special funds; [and]
(16) Tourism special fund established under section [[]201B-11[]]; and
(17) Universal service fund established under chapter 269;
shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 3. Section 269-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established outside of the state treasury a special fund to be known as the universal service fund to be administered by the commission[.] to implement the policies and goals of universal service. The fund shall consist of contributions from the sources identified in subsections (e) and (f). Interest earned from the balance of the fund shall become a part of the fund. The commission shall adopt rules regarding the distribution of moneys from the fund including reimbursements to carriers for providing reduced rates to low-income, elderly, residents of underserved or rural areas, or other subscribers, as authorized by the commission."

SECTION 4. There is appropriated out of the universal service fund the sum of $800,000 or so much thereof as may be necessary for fiscal year 1999-2000, for the public utilities commission to carry out the purposes of the universal service program; provided that the sum appropriated shall be temporarily loaned from the public utilities commission special fund to the universal service fund; and provided further that the funds borrowed from the public utilities commission special fund shall be repaid from the universal service fund when sufficient funds are collected in the universal service fund as determined by the public utilities commission.

SECTION 5. The sum appropriated shall be expended by the public utilities commission for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1999; provided that:
(1) The amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act shall not be repealed when those sections are reenacted on July 1, 2000, pursuant to section 13 of Act 216, Session Laws of Hawaii 1997; and
(2) The amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 25, 1999.)

ACT 136 S.B. NO. 1294

A Bill for an Act Relating to the Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87-27, Hawaii Revised Statutes, is amended to read as follows:

"**§87-27 Supplemental plan to federal Medicare.** Any other provision of this chapter notwithstanding, the board of trustees shall establish, effective July 1, 1996,[1] a health benefit plan which takes into account benefits available to an employee-beneficiary and spouse under the federal Medicare plan, subject to the following conditions:

(1) There shall be no duplication of benefits payable under federal Medicare but the plan so established by the board shall be supplemental to the federal Medicare plan[.];

(2) The contribution for voluntary medical insurance coverage under federal Medicare may be paid by the fund, in such manner as the board shall specify, in the case of an employee-beneficiary who is a retired employee, and spouse while the employee-beneficiary is living, including members of the old pension system and after death the employee-beneficiary's spouse provided the spouse qualifies as an employee-beneficiary; provided that the counties, through their respective departments of finance, shall reimburse the fund for any contributions made for county employee-beneficiaries under this paragraph[.];

(3) The benefits available under the plan, when taken together with the benefits available under the federal Medicare plan shall, as nearly as is possible, approximate the benefits available under the plans set forth in section 87-22. If, for any reason, a situation develops where the benefits available under the supplemental plan and the federal Medicare plan substantially differ from those that would otherwise be available, the board is authorized to correct this inequity to assure substantial equality of benefits[.];

(4) [Any employee-beneficiary or dependent-beneficiary who is enrolled in the federal Medicare plan shall participate in the supplemental plan to be set up hereunder, and any employee-beneficiary or dependent-beneficiary eligible for, but not enrolled in the federal Medicare plan, may participate in such other plans as are set forth in section 87-22.] Notwithstanding any other law to the contrary, all employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the federal Medicare Part B medical insurance plan shall enroll in that federal plan as a requirement to receive the contributions and to participate in the employee benefit plans described in this chapter. This paragraph shall pertain to retired employees and their spouses and the surviving spouses of deceased retirees and employees killed in the performance of duty; and

(5) The board of trustees shall determine which employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the federal Medicare Part B medical insurance plan, may participate in such other plans as are set forth in section 87-22."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

Note

1. So in original.

ACT 137 S.B. NO. 1452

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 178, Session Laws of Hawaii 1998, enacted the Hawaii Patient Bill of Rights and Responsibilities Act to regulate managed care. Act 178 also required the insurance commissioner to convene a task force to review various laws providing protection of patient rights and responsibilities with regard to health care, especially managed care. This Act contains the statutory revisions recommended by the task force to ensure the protection of consumer rights.

The purpose of this Act is to strengthen the protection of the consumer rights of patients receiving health care under managed care plans and from health maintenance organizations.

SECTION 2. Chapter 432E, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"**§432E-A Annual report.** The commissioner shall submit annually to the legislature a report that shall contain the number of external review hearing cases reviewed, the type of cases reviewed, a summary of the nature of the cases reviewed, and the disposition of the cases reviewed. The identities of the plan and the enrollee shall be protected from disclosure in the report.

§432E-B Accreditation of managed care plans. (a) Beginning January 1, 1999, the commissioner shall contract with one or more certified vendors of the consumer assessment health plan survey to conduct a survey of all managed care plans actively offering managed care plans in this State to provide managed care plans an opportunity to learn whether any deficiencies exist or any improvements are required; provided that the information collected shall be kept confidential in the first year, and thereafter shall be available to the public.

(b) The commissioner shall conduct a program that promotes public awareness and education about managed care plans so that consumers may make better or more informed choices when selecting a managed care plan.

(c) Beginning January 1, 2000, unaccredited plans shall submit a plan to the commissioner to achieve national accreditation status within five years. After the first year of the five-year plan, each unaccredited plan shall also submit an annual progress report to the commissioner on the status of gaining national accreditation. The commissioner shall determine which national accreditation organization is appropriate for each type of plan.

(d) Every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A of chapter 431, shall deposit with the commissioner a fee to provide for the actual costs of the survey and educational program to be determined by the commissioner on July 1 of each year, to be credited to the insurance regulation fund. In addition, every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A of chapter 431, shall pay to the commissioner at a time to be determined by the commissioner, a one-time assessment in an amount to be determined by the commissioner, to be credited to the insurance regulation fund.

§432E-C Rules. The commissioner shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter."

SECTION 3. Section 431:10C-103, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

""Emergency medical condition" means a medical condition that manifests itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

(1) Placing the health of the individual, including the health of a pregnant woman or her unborn child, in serious jeopardy;
(2) Serious impairment to bodily functions; or
(3) Serious dysfunction of any bodily organ or part.

"Emergency services" means:

(1) A medical screening examination, if required by federal law, that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department, to evaluate an emergency medical condition; or
(2) Further medical examination and treatment, if required by federal law, that is within the capabilities of the staff and facilities available at the hospital, including any trauma and burn center of the hospital to stabilize an emergency medical condition.

"Stabilize" means the provision of medical treatment as may be necessary to assure, within reasonable medical probability, that no material deterioration of an individual's medical condition is likely to result from or occur during a transfer to another facility, if the medical condition could result in placing the health of the individual or the health of a pregnant woman or her unborn child in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part."

SECTION 4. Section 432E-3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432E-3[]] Access to services.** A managed care plan shall demonstrate to the commissioner upon request that its plan:

(1) Makes benefits available and accessible to each enrollee electing the managed care plan in the defined service area with reasonable promptness and in a manner which promotes continuity in the provision of health care services;
(2) Provides access to sufficient numbers and types of providers to ensure that all covered services will be accessible without unreasonable delay;
(3) When medically necessary, provides health care services twenty-four hours a day, seven days a week;
(4) Provides a reasonable choice of qualified providers of women's health services such as gynecologists, obstetricians, certified nurse-midwives, and advanced practice nurses to provide preventive and routine women's health care services; [and]
(5) Provides payment or reimbursement for adequately documented emergency services[.] as provided in this chapter; and
(6) Allows standing referrals to specialists capable of providing and coordinating primary and specialty care for an enrollee's life-threatening, chronic, degenerative, or disabling disease or condition."

SECTION 5.[1] Section 432E-5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432E-5[]] Complaints and appeals procedure for enrollees.** (a) A managed care plan with enrollees in this State shall establish and maintain a procedure to provide for the resolution of an enrollee's complaints and appeals.

(b) The managed care plan at all times shall make available its complaints and appeals procedures. The complaints and appeals procedures shall be reasonably understandable to the average layperson and shall be provided in languages other than English upon request.

(c) A managed care plan shall send notice of its final internal determination to the enrollee, the enrollee's appointed representative, if applicable, and the commissioner. The notice shall include information regarding the enrollee's rights and procedures under section 432E-6."

SECTION 6.[1] Section 432E-6, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432E-6[]] Appeals to the commissioner.** (a) After exhausting all internal complaint and appeal procedures available, an enrollee, or the enrollee's treating provider or appointed representative, may appeal an adverse decision of a managed care plan to a [three member] three-member review panel appointed by the commissioner composed of a representative from a health plan not involved in the complaint, a provider licensed to practice and practicing medicine in Hawaii not involved in the complaint, and the commissioner or the commissioner's designee in the following manner:

(1) The enrollee shall submit a request for review to the commissioner within thirty days from the date of the final determination by the managed care plan[.];

(2) Upon receipt of the request and upon a showing of good cause, the commissioner shall appoint the members of the panel and shall conduct a review hearing pursuant to chapter 91. If the amount in controversy is less than $500, the commissioner may conduct a review hearing without appointing a review panel;

(3) The review hearing shall be conducted as soon as practicable, taking into consideration the medical exigencies of the case; provided that the hearing shall be held no later than sixty days from the date of the request for the hearing;

(4) The commissioner may retain, without regard to chapters 76 and 77, an independent medical expert trained in the field of medicine most appropriately related to the matter under review. Presentation of evidence for this purpose shall be exempt from section 91-9(g);

[(3)] (5) After considering the enrollee's complaint, the plan's response, and any affidavits filed by the parties, the commissioner may dismiss the appeal if it is determined that the appeal is frivolous or without merit[.]; and

(6) The review panel shall review every adverse determination to determine whether or not the plan involved acted reasonably and with sound medical judgment. The review panel shall consider the clinical standards of the plan, the information provided, the attending physician's recommendations, and generally accepted practice guidelines.

The commissioner, upon a majority vote of the panel, shall issue an order affirming, modifying, or reversing the decision within thirty days of the hearing.

(b) The procedure set forth in this section shall not apply to claims or allegations of health provider malpractice, professional negligence, or other professional fault against participating providers.

[(c) The commissioner may adopt rules pursuant to chapter 91 to carry out the purposes of this section.]

(c) Members of the review panel shall be granted immunity from liability and damages relating to their duties under this section.

(d) An enrollee may be allowed, at the commissioner's discretion, an award of a reasonable sum for attorney's fees and reasonable costs of suit in an action brought against the managed care plan."

SECTION 7.[1] Section 432E-7, Hawaii Revised Statutes, is amended to read as follows:

"[[]§432E-7[]] **Information to enrollees.** (a) The managed care plan shall provide to its enrollees upon enrollment and thereafter upon request the following information:

(1) A list of participating providers which shall [indicate their specialty and whether board certification has been attained;] be updated on a regular basis indicating, at a minimum, their specialty and whether the provider is accepting new patients;
(2) A complete description of benefits, services, and copayments;
(3) A statement on enrollee's rights, responsibilities, and obligations;
(4) An explanation of the referral process, if any;
(5) Where services or benefits may be obtained;
[(6) A statement regarding informed consent;
(7)] (6) Information on complaints and appeals procedures; and
[(8)] (7) The telephone number of the insurance division [and the office of consumer complaints].

This information shall be provided to prospective enrollees upon request.

(b) Every managed care plan shall provide to the commissioner and its enrollees notice of any material change in [the operation of the organization initiated by the plan that will affect them directly within thirty days of the material change.] participating provider agreements, services, or benefits, if the change affects the organization or operation of the managed care plan and the enrollee's services or benefits. The managed care plan shall provide notice to enrollees not more than sixty days after the change in a format that makes the notice clear and conspicuous so that it is readily noticeable by the enrollee.

[(c) For purposes of this section "material change" means a change in participating provider agreements, services, or benefits.]

(c) A managed care plan shall provide generic participating provider contracts to enrollees, upon request."

SECTION 8.[1] Section 432E-10, Hawaii Revised Statutes, is amended to read as follows:

"[[]§432E-10[]] **Managed care plan performance measurement and data reporting standards.** (a) It is the policy of this State that all managed care plans shall adopt and comply with nationally developed and promulgated standards for measuring quality, outcomes, access, satisfaction, and utilization of services. Every contract between a managed care plan and a participating provider of health care services shall require the participating provider to comply with the managed care plan's requests for any information necessary for the managed care plan to comply with the requirements of this chapter. [The standard to be applied is the

Health Employer Data and Information Set (HEDIS) 3.0 data set, as amended from time to time.] The State shall require that:

(1) Consumers, providers, managed care plans, purchasers, and regulators shall be equitably represented in the development of standards; and

(2) Standards shall result in measurement and reporting that is purposeful, valid, and scientifically based, applied in a consistent and comparable manner, efficient and cost effective, and designed to minimize redundancy and duplication of effort.

(b) All managed care plans, no less than annually, shall report to the commissioner comparable information on performance, including measures of quality, outcomes, access, satisfaction, and utilization of services; provided that:

(1) Reporting shall be based upon a core data and information set that builds upon nationally recognized performance measurement systems. The core data and information set shall include standardized measures of:

(A) Effectiveness and appropriateness of care (the impact of care delivered to managed care plan enrollees, [including] for example, results of the plan for childhood immunizations, cholesterol screening, mammography screening, cervical cancer screening, prenatal visits in the first trimester of pregnancy, and diabetic retinal examinations);

(B) Access and availability of care (the extent to which plan enrollees have access to the health care providers they need or desire to see, and receive appropriate services in a timely manner, without inappropriate barriers or inconvenience);

(C) Satisfaction with the experience of care (the results of the most recent enrollee satisfaction survey using standardized survey design and methods);

(D) Managed care plan stability (attributes of a managed care plan which affect its ability to deliver high-quality care and service on a sustained basis);

(E) Use of services (rates of service use per [1,000] one thousand enrollees as well as percentages of enrollees who receive specified services);

(F) Cost of care (expenditures per enrollee per month, premium rates for selected membership categories, and rates of increases); and

(G) Managed care plan descriptive information (the plan name, location of headquarters, and number of years the plan has been in business; the model type of the plan; the counties in which the plan operates; the total number of participating physicians per [1,000] one thousand enrollees and the number of primary care physicians per [1,000] one thousand enrollees; the number of participating hospitals per [10,000] ten thousand enrollees; the percentage of participating physicians who are board certified; and a list of wellness and health care education programs offered by the plan);

(2) Information shall be uniformly reported by managed care plans in a standardized format, as determined by rule;

(3) Information supplied by managed care plans shall be subject to independent audit by the appropriate regulatory agency or its designee to verify accuracy and protect against misrepresentation;

(4) Information reported by managed care plans shall be adjusted, based on standardized methods, to control for the effects of differences in health risk, severity of illness, or mix of services;

(5) A managed care plan shall ensure confidentiality of records and shall not disclose individually identifiable data or information pertaining to the diagnosis, treatment, or health of any enrollee, except as provided under law; and

(6) A managed care plan shall disclose to its enrollees the quality and satisfaction assessments used, including the current results of the assessments."

SECTION 9.[1] Section 1 of Act 246, Session Laws of Hawaii 1998, is amended by amending subsection (f) of the new section added to article 10A of chapter 431, Hawaii Revised Statutes, to read as follows:

"(f) A health plan shall reimburse an emergency provider and an emergency department for any items or services not necessary to stabilize the patient [but that] under at least one of the following:

(1) The items or services are determined to be medically necessary to treat the illness that [lead] led the patient to believe that [he or she] the patient had an emergency medical condition, and that a reasonable patient would expect to receive such items or services from a physician at the time of presentation[.]; or

(2) The items or services are determined to be medically necessary by the emergency provider, if the emergency department:

(A) After a documented good faith effort, is unable to reach the enrollee's health plan:

(i) Within thirty minutes from the initial examination of the enrollee; or

(ii) If the enrollee needs to be stabilized, within thirty minutes of stabilization;

(B) Has successfully contacted the plan as required in subparagraph (A), and has not received a denial from the plan within thirty minutes of the initial contact, unless the plan is able to document that it has made an unsuccessful good faith effort to reach the emergency department within thirty minutes after receiving the request for authorization; or

(C) Has successfully contacted the plan and has received a denial from a person other than a participating physician and:

(i) A participating physician authorized by the plan to review denials reverses the denial; or

(ii) A participating physician authorized by the plan to review denials fails to communicate a determination affirming the denial (unless the treating physician waives the requirement for such determination), within thirty minutes after the initial denial is communicated by the plan.

A health plan shall immediately arrange for an alternate plan of treatment for the member if a non-participating emergency provider and the plan are unable to reach agreement on services necessary beyond those immediately needed to stabilize the member, under which:

(A) A participating physician with privileges at the hospital arrives at the emergency department of the hospital promptly and assumes responsibility for the treatment of the member; or

(B) With the agreement of the treating physician or another health professional in the emergency department:

(i) Arrangement is made for transfer of the member to another facility using medical resources consistent with the condition of the enrollee;

(ii) An appointment is made with a participating physician or provider for treatment needed by the enrollee; or

(iii) Another arrangement is made for treatment of the enrollee."

SECTION 10.[1] Section 2 of Act 246, Session Laws of Hawaii 1998, is amended by amending subsection (f) of the new section added to article 1 of chapter 432, Hawaii Revised Statutes, to read as follows:

"(f) A health plan shall reimburse an emergency provider and an emergency department for any items or services not necessary to stabilize the patient [but that] under at least one of the following:

(1) The items or services are determined to be medically necessary to treat the illness that [lead] led the patient to believe that [he or she] the patient had an emergency medical condition, and that a reasonable patient would expect to receive such items or services from a physician at the time of presentation[.]; or

(2) The items or services are determined to be medically necessary by the emergency provider, if the emergency department:

(A) After a documented good faith effort, is unable to reach the enrollee's health plan:

(i) Within thirty minutes from the initial examination of the enrollee; or

(ii) If the enrollee needs to be stabilized, within thirty minutes of stabilization;

(B) Has successfully contacted the plan as required in subparagraph (A), and has not received a denial from the plan within thirty minutes of the initial contact, unless the plan is able to document that it has made an unsuccessful good faith effort to reach the emergency department within thirty minutes after receiving the request for authorization; or

(C) Has successfully contacted the plan and has received a denial from a person other than a participating physician and:

(i) A participating physician authorized by the plan to review denials reverses the denial; or

(ii) A participating physician authorized by the plan to review denials fails to communicate a determination affirming the denial (unless the treating physician waives the requirement for such determination), within thirty minutes after the initial denial is communicated by the plan.

A health plan shall immediately arrange for an alternate plan of treatment for the member if a non-participating emergency provider and the plan are unable to reach agreement on services necessary beyond those immediately needed to stabilize the member, under which:

(A) A participating physician with privileges at the hospital arrives at the emergency department of the hospital promptly and assumes responsibility for the treatment of the member; or

(B) With the agreement of the treating physician or another health professional in the emergency department:

(i) Arrangement is made for transfer of the member to another facility using medical resources consistent with the condition of the enrollee;

(ii) An appointment is made with a participating physician or provider for treatment needed by the enrollee; or

(iii) Another arrangement is made for treatment of the enrollee."

SECTION 11.[1] Section 3 of Act 246, Session Laws of Hawaii 1998, is amended by amending subsection (f) of the new section added to chapter 432D, Hawaii Revised Statutes, to read as follows:

"(f) A health plan shall reimburse an emergency provider and an emergency department for any items or services not necessary to stabilize the patient [but that] under at least one of the following:

(1) The items or services are determined to be medically necessary to treat the illness that [lead] led the patient to believe that [he or she] the patient had an emergency medical condition, and that a reasonable patient would expect to receive such items or services from a physician at the time of presentation[.]; or

(2) The items or services are determined to be medically necessary by the emergency provider, if the emergency department:

(A) After a documented good faith effort, is unable to reach the enrollee's health plan:

(i) Within thirty minutes from the initial examination of the enrollee; or

(ii) If the enrollee needs to be stabilized, within thirty minutes of stabilization;

(B) Has successfully contacted the plan as required in subparagraph (A), and has not received a denial from the plan within thirty minutes of the initial contact, unless the plan is able to document that it has made an unsuccessful good faith effort to reach the emergency department within thirty minutes after receiving the request for authorization; or

(C) Has successfully contacted the plan and has received a denial from a person other than a participating physician and:

(i) A participating physician authorized by the plan to review denials reverses the denial; or

(ii) A participating physician authorized by the plan to review denials fails to communicate a determination affirming the denial (unless the treating physician waives the requirement for such determination), within thirty minutes after the initial denial is communicated by the plan.

A health plan shall immediately arrange for an alternate plan of treatment for the member if a non-participating emergency provider and the plan are unable to reach agreement on services necessary beyond those immediately needed to stabilize the member, under which:

(A) A participating physician with privileges at the hospital arrives at the emergency department of the hospital promptly and assumes responsibility for the treatment of the member; or

(B) With the agreement of the treating physician or another health professional in the emergency department:

(i) Arrangement is made for transfer of the member to another facility using medical resources consistent with the condition of the enrollee;

(ii) An appointment is made with a participating physician or provider for treatment needed by the enrollee; or

(iii) Another arrangement is made for treatment of the enrollee."

SECTION 12.[1] The patient rights and responsibilities task force shall develop proposed legislation addressing issues within the scope of the task force's responsibilities under Act 178, Session Laws of Hawaii 1998, left unresolved by this

Act. The proposed legislation shall be submitted to the legislature no later than twenty days before the convening of the regular session of 2000.

SECTION 13.[1] In codifying new sections added by this Act, the revisor shall substitute the appropriate section numbers for the letters used in designating the new sections of this Act.

SECTION 14.[1] Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 15.[1] This Act shall take effect upon its approval; provided that sections 3, 9,[1] 10,[1] and 11[1] of this Act shall be repealed on July 1, 2003, and section 431:10C-103, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 25, 1999.)

Notes

1. Section number redesignated.
2. Edited pursuant to HRS §23G-16.5.

ACT 138 S.B. NO. 1470

A Bill for an Act Relating to State Officers and Employees Excluded From Collective Bargaining and Making Appropriations and Other Adjustments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 89C-2, Hawaii Revised Statutes, provides for compensation, terms, and conditions of employment for public officers and employees who are excluded from collective bargaining. To maintain parity with other state employees and based on a settlement for a two-year collectively bargained agreement with the exclusive representative of bargaining units 3, 4, and 13, an immediate appropriation is needed to fund salary increases and other cost adjustments for certain excluded legislative officers and employees.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii to the legislative agencies and houses indicated below the following sums or so much thereof as may be necessary, for fiscal year 1999-2000 and the following sums or so much thereof as may be necessary for fiscal year 2000-2001 to fund the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining:

	FY 1998-1999	FY 1999-2000	FY 2000-2001
Office of the legislative auditor	$65,633	$52,593	$52,593
Ethics commission	$14,388	$10,260	$10,260
Legislative reference bureau	$79,512	$62,183	$62,183
Ombudsman	$34,321	$26,952	$26,952

SECTION 3. The sums appropriated shall be expended by the respective heads of the legislative agencies and houses.

SECTION 4. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds, shall be paid wholly or proportionally, as the case may be, from the respective funds.

SECTION 5. Funds appropriated or authorized by this Act that are not expended or encumbered by the last day of the fiscal year for which they were appropriated or authorized shall lapse as of those dates.

SECTION 6. This Act shall take effect on July 1, 1999.

(Approved June 25, 1999.)

ACT 139 S.B. NO. 1485

A Bill for an Act Relating to Minors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-22, Hawaii Revised Statutes, is amended to read as follows:

"**§571-22 Waiver of jurisdiction; transfer to other courts.** (a) The court may waive jurisdiction and order a minor or adult held for criminal proceedings after full investigation and hearing where the person during the person's minority, but on or after the person's sixteenth birthday, is alleged to have committed an act that would constitute a felony if committed by an adult, and the court finds that:

(1) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill;
(2) The person is not treatable in any available institution or facility within the State designed for the care and treatment of children; or
(3) The safety of the community requires that the person be subject to judicial restraint for a period extending beyond the person's minority.

(b) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, [incident to a] <u>after a full investigation and</u> hearing, the court finds that:

(1) The person during the person's minority, but on or after the person's fourteenth birthday, is alleged to have committed an act that would constitute a felony if committed by an adult and either:
    (A) The act resulted in serious bodily injury to a victim;
    (B) The act would constitute a class A felony if committed by an adult; or
    (C) The person has more than one prior adjudication for acts [which] <u>that</u> would constitute felonies if committed by an adult; and
(2) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill.

(c) The factors to be considered in deciding whether jurisdiction should be waived under subsection (a) or (b) are as follows:

(1) The seriousness of the alleged offense;
(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or wilful manner;

(3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime;

(5) The sophistication and maturity of the minor as determined by consideration of the minor's home, environmental situation, emotional attitude, and pattern of living;

(6) The record and previous history of the minor, including previous contacts with the family court, other law enforcement agencies, courts in other jurisdictions, prior periods of probation to the family court, or prior commitments to juvenile institutions;

(7) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the minor (if the minor is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the family court; and

(8) All other relevant matters.

(d) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, [incident to a] after a full investigation and hearing, the court finds that:

(1) The person during the person's minority is alleged to have committed an act that would constitute murder in the first degree or second degree or attempted murder in the first degree or second degree if committed by an adult; and

(2) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill.

(e) Transfer of a minor for criminal proceedings terminates the jurisdiction of the court over the minor with respect to any subsequent acts that would otherwise be within the court's jurisdiction under section 571-11(1) and thereby confers jurisdiction over the minor to a court of competent criminal jurisdiction.

(f) If criminal proceedings instituted under subsection (a), (b), or (d) result in an acquittal or other discharge of the minor involved, no petition shall be filed thereafter in any family court based on the same facts as were alleged in the criminal proceeding.

(g) A minor shall not be subject to criminal prosecution based on the facts giving rise to a petition filed under this chapter, except as otherwise provided in this chapter.

(h) Where the petition has been filed in a circuit other than the minor's residence, the judge, in the judge's discretion, may transfer the case to the family court of the circuit of the minor's residence.

(i) When a petition is filed bringing a minor before the court under section 571-11(1) and (2), and the minor resides outside of the circuit, but within the State, the court, after a finding as to the allegations in the petition, may certify the case for disposition to the family court having jurisdiction where the minor resides. Thereupon, the court shall accept the case and may dispose of the case as if the petition was originally filed in that court. Whenever a case is so certified, the certifying court shall forward to the receiving court certified copies of all pertinent legal and social records.

(j) If the court waives jurisdiction pursuant to subsection (b) or (d), the court also may waive its jurisdiction with respect to any other felony charges arising from the same episode to the charge for which the minor was waived."

SECTION 2. Section 571-84, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection and use only by persons whose official duties are concerned with this chapter, except as provided in subsections (d)[,] and (f)[, and (j)] or as otherwise ordered by the court."

SECTION 3. Section 571-84.6, Hawaii Revised Statutes, is amended to read as follows:

"[[]§571-84.6[]] Juvenile][1] Minor law violators; proceedings and records not confidential. (a) As used in this section:

"Legal record" means petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers and adjudication data, other than social records, filed in proceedings before the court.

"Social record" means those social and clinical studies, reports, or examinations prepared in any case pursuant to this chapter.

(b) Notwithstanding any other law to the contrary, in any proceeding in which a minor age fourteen years of age or older has been adjudicated by the court under section 571-11(1) for an act that[,] if committed by an adult would:

(1) Be murder in the first degree or second degree or attempted murder in the first degree;
(2) Result in serious bodily injury to or death of a victim;
(3) Be a class A felony; or
(4) Be a felony and the minor has more than one prior adjudication for acts [which] that would constitute felonies if committed by an adult[;],

all legal records related to the above stated proceeding shall be open for public inspection, unless the administrative judge of the family court or the judge's designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that public inspection would be inconsistent with or defeat the express purpose of this section. All social records shall be kept confidential except as provided in section 571-84.

(c) Notwithstanding any other law to the contrary, in any case in which a minor age sixteen years of age or older comes within section 571-11(1) is taken into custody for an act that[,] if committed by an adult would:

(1) Be murder in the first degree or second degree or attempted murder in the first degree;
(2) Result in serious bodily injury to or death of a victim;
(3) Be a class A felony and the minor has one or more prior adjudications for an act [which] that would constitute a felony if committed by an adult; [and] or
(4) Be a class B or C felony and the minor has more than one prior adjudication for acts [which] that would constitute felonies if committed by an adult[;],

all legal proceedings related to the above stated case shall be open to the public unless the administrative judge of the family court or the judge's designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that an open proceeding would be inconsistent with or defeat the express purpose of this section."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

Note

1. So in original.

ACT 140 S.B. NO. 1502

A Bill for an Act Relating to Campaign Spending.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§11- Electioneering communications.** (a) Every person who makes a disbursement for electioneering communications in an aggregate amount of $2,000 during any calendar year shall, within twenty-four hours of each disclosure date provided in this section, file with the commission a statement of information described in subsection (b).

(b) Each statement required to be filed under this section shall contain the following information:

(1) The identification of the person making the disbursement, any entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;

(2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;

(3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;

(5) If the disbursements were made by a committee, the names and addresses of all persons who contributed to the committee for the purpose of publishing or broadcasting the electioneering communications;

(6) If the disbursements were made by an organization other than a committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and

(7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, political party or agent of any candidate, candidate committee or political party and, if so, the identification of the candidate, candidate committee, political party, or agent involved.

(c) For the purposes of this section:

"Disclosure date" means, for every calendar year, the first date by which a person has made disbursements during that same year of more than $2,000, in the aggregate, for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

"Electioneering communication" means any paid advertising broadcast from a television or radio broadcast station, or published in any periodical or

newspaper, or sent by mail at a bulk rate, which refers to a clearly identifiable candidate and is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election. "Electioneering communication" shall not include communications in a news story or editorial, communications which constitute expenditures by the disbursing organization, or communications in house bulletins."

SECTION 2. Section 11-207, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Expenditures, or disbursements for electioneering communications as defined in section 11- , made by any person or political party for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's political committee, or their agents, shall be considered to be a contribution to such candidate[.] and expenditure by such candidate.

The financing by any person or political party of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees, or agents shall be considered to be a contribution to such candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 141 H.B. NO. 1471

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to make the office of elections and the elections appointment panel permanent. This Act also renames the elections appointment panel as the elections appointment and review panel. In addition, this Act requires that panel to establish an elections review program to:

(1) Establish performance standards for, and conduct biennial performance evaluations of, the operation of elections, and the performance of the chief election officer pursuant to article IV, section 3 of the State Constitution; and

(2) Review the operation of elections and the performance of the chief election officer, including complaints filed against the same, and make recommendations to the chief election officer on methods to improve the operation of elections and the chief election officer's performance.

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§11- **Elections review program.** The elections appointment and review panel shall develop and implement an elections review program, the purposes of which shall be to:

(1) Establish performance standards for the operation of elections and the performance of the chief election officer. The performance standards shall provide the criteria by which the operation of elections and the performance of the chief election officer will be evaluated;
(2) Review the operation of elections and the performance of the chief election officer;
(3) Make recommendations to the chief election officer on methods to improve the operation of elections;
(4) Establish policies for the administration of an elections observer program, to include ensuring the validity and reliability of election results;
(5) Conduct a biennial performance evaluation of the operation of elections and the performance of the chief election officer;
(6) Submit the findings and recommendations from the biennial performance evaluation to the legislature, not less than twenty days prior to the convening of each regular session held in odd-numbered years; and
(7) Adopt rules in accordance with chapter 91 to carry out the purposes of this section."

PART I

SECTION 3. Section 15 of Act 27, Special Session Laws of Hawaii 1995, as amended by Act 13, Session Laws of Hawaii 1996, is amended to read as follows:

"SECTION 15. This Act shall take effect on July 1, 1995[; provided that on June 30, 1999, this Act shall be repealed and sections 11-1, 11-2, 11-5, 11-191, 11-194, 11-195, 11-216, 12-8, and 26-1, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act]."

PART II

SECTION 4. Section 11-1, Hawaii Revised Statutes, is amended by amending the definition of "chief election officer" to read as follows:

""Chief election officer", the individual appointed by the elections appointment and review panel pursuant to section 11-1.6 to supervise state elections."

SECTION 5. Section 11-1.5, Hawaii Revised Statutes, is amended to read as follows:

"[[]§11-1.5[]] **Office of elections established.** (a) There is established an office of elections to provide support to the chief election officer. The office shall be attached to the office of the lieutenant governor for purposes of administration. The chief election officer shall be the administrator of the office of elections. Except for exercising the right to vote, the full-time employees of the office of elections shall not support, advocate, or aid in the election or defeat of any candidate for public office.

(b) The office of elections shall provide staff support to the elections appointment and review panel, as requested by the panel."

SECTION 6. Section 11-1.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) The chief election officer shall be appointed by the elections appointment and review panel, without regard to chapters 76 and 77. [The elections appointment panel shall select and appoint the chief election officer in an odd-numbered year.] The appointment shall not be subject to the advice and consent of the senate. In the event of a vacancy, the panel shall meet expeditiously to select and appoint a new chief election officer to serve the remainder of the unexpired term.

(b) The person [so] appointed to be chief election officer shall be a citizen of the United States, a resident of the State, and a registered voter of the State."

2. By amending subsection (f) to read:

"(f) The chief election officer may [be reappointed by] petition the panel[.] for reappointment. The panel may reappoint an incumbent chief election officer based on the performance evaluation of the chief election officer conducted by the panel. The [chief election officer] panel may authorize the chief election officer to hold office until a successor is appointed."

PART III

SECTION 7. Section 11-2.5, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsections (a) to (d) to read:

"[[]§11-2.5[]] Elections appointment and review panel established; composition; term; removal; operations. (a) [There] Notwithstanding any law to the contrary, there is established an elections appointment and review panel, consisting of five members who shall [be assembled every four years beginning July 1, 1995, whose sole purpose is to] select and appoint the chief election officer[.]; review the operation of elections; evaluate the performance of the chief election officer as required by section 11- ; and perform such other duties as may be required by law.

(b) The [governor shall appoint the five] members of the elections appointment and review panel[. Four of the five members] shall be [selected from lists, each consisting of five nominees, submitted by the following] appointed as follows:

(1) [The] One member to be appointed by the president of the senate;

(2) [The] One member to be appointed by the speaker of the house of representatives;

[(3) The members of the senate belonging to the party or parties different from that of the president of the senate; and

(4) The members of the house of representatives belonging to the party or parties different from that of the speaker of the house of representatives.

The governor shall select one person from each of these four lists. The fifth member shall be]

(3) One member to be appointed by the minority leader of the senate;

(4) One member to be appointed by the minority leader of the house of representatives; and

(5) One member to be selected with the governor's complete discretion.

The appointments shall not require the advice and consent of the senate.

(c) The term of each member shall be [four] six years[.]; provided that:

(1) The first term for the members appointed by the president of the senate, the minority leader of the house of representatives, and the governor, shall be six years and shall commence upon the appointment of the first member to the elections appointment and review panel and shall expire six years from that date, and

(2) The first term of the remaining members shall be four years and shall commence upon the appointment of the first member to the elections appointment and review panel and shall expire four years from that date.

No person shall be appointed consecutively to more than two terms as a member of the panel. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment. Any member of the panel whose term has expired and who is not disqualified for membership may continue in office as a holdover member until a successor is appointed; provided that a holdover member shall not hold office for more than six months after expiration of the member's term of office.

(d) The governor may remove or suspend any member of the panel[,] for cause, upon the filing of a written finding with the panel and upon service of a copy of the written finding on the member removed or suspended[.]; provided that any vacancy due to removal or suspension shall be filled by the respective appointing authority established in subsection (b)."

2. By amending subsection (h) to read:

"(h) The elections appointment and review panel shall be attached to the office of the lieutenant governor for purposes of administration."

SECTION 8. Section 11-2.6, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"[ ]§11-2.6[ ] Elections appointment and review panel; political activities."

2. By amending subsection (b) to read:

"(b) Each panel member shall retain the right to:

(1) Register and vote as the panel member chooses in any election;
(2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
(3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
(4) Make a financial contribution to a political party or organization;
(5) Serve as an election judge or clerk or in a similar position to perform nonpartisan election duties as prescribed by law; and
(6) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the panel member's efficiency or integrity as a panel member or the neutrality, efficiency, or integrity of the elections appointment and review panel."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 10. This Act shall take effect on June 29, 1999.

(Approved June 28, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 142

S.B. NO. 957

A Bill for an Act Relating to Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The motor vehicle insurance benefits task force (task force) was created by Act 251, Session Laws of Hawaii 1997, which instituted major reforms to the no-fault system. The task force was to review the motor vehicle insurance system and develop a comprehensive plan for reducing costs, paying for the cost of motor vehicle insurance or benefits, maximizing coverage and benefits, and alleviating the problem of uninsured motorists. The legislature finds that the task force has been studying issues such as pay-at-the-pump, twenty-four hour care, enforcing uninsured motorist requirements, possible repeal of required motor vehicle insurance, and repealing the requirement for personal injury protection coverage, and needs more time to complete its study and to make recommendations to the legislature. The legislature further finds that the State's actuary cannot make an actuarial analysis of Act 251 until at least eighteen months from the implementation of the Act, which took effect January 1, 1998.

The purpose of this Act is to extend the date of the motor vehicle insurance benefits task force for its report to the legislature and the governor. This Act also provides certain public assistance recipients with free no-fault insurance coverage.

SECTION 2. Act 251, Session Laws of Hawaii 1997, is amended by amending section 65 to read as follows:

"SECTION 65. There is established a motor vehicle insurance benefits task force that shall be administratively attached to the insurance division of the department of commerce and consumer affairs.

The task force shall consist of the following three members:

(1) The insurance commissioner;
(2) One person appointed by the governor from a list submitted by the president of the senate; and
(3) One person appointed by the governor from a list submitted by the speaker of the house of representatives.

If a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. The members shall serve without compensation but shall be reimbursed for all necessary expenses.

The task force shall review the motor vehicle insurance system and develop a comprehensive plan for:

(1) Reducing costs;
(2) Paying for the cost of motor vehicle insurance or benefits;
(3) Maximizing coverage and benefits for residents; [and]
(4) Balancing the maximum coverage and benefits for victims of motor vehicle accidents with the lowest possible cost for purchasers of motor vehicle insurance; and
(5) Alleviating the problem of uninsured motorists.

In assisting the task force to carry out this section, the insurance commissioner may:

(1) Hire, without regard to chapters 76 and 77, Hawaii Revised Statutes, sufficient staff and retain, without regard to chapter 103D, Hawaii Revised Statutes, consultants or other persons to provide those services deemed by the task force necessary to carry out its function; and

(2) Conduct informational hearings and compel, through the issuance of subpoenas, the attendance of witnesses and the production of documents and records.

The task force shall submit a progress report to the legislature and the governor no later than twenty days prior to the convening of the regular session of 1998 and a report of its final recommendations to the legislature and the governor no later than [twenty days prior to the convening of the regular session of 1999.] June 30, 2000."

SECTION 3. Section 431:10C-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The plan shall provide all personal injury protection benefits and services and bodily injury and property damage liability coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this part upon the payment of premiums as provided in subpart C, as follows:

(1) The plan shall provide personal injury protection benefits and policies for each of the following classes, and each class shall be able to secure a personal injury protection and bodily injury and property damage liability policy through the plan:
   (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner's examination of the motor vehicle insurers' business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk motor vehicle driver;
   (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
      (i) Heedless and careless driving;
      (ii) Driving while license suspended or revoked;
      (iii) Leaving the scene of an accident;
      (iv) Manslaughter, if resulting from the operation of a motor vehicle; or
      (v) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug as provided in section 291-7;
   (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity;
   (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes; and
   (E) All other motor vehicles, not classified under subparagraph (A), (B), (C), or (D), owned by licensed drivers who are unable to obtain motor vehicle insurance policies and optional additional insurance through ordinary methods;
(2) The plan shall provide personal injury protection benefits and bodily injury and property damage policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under

subpart C, at the option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:

(A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of direct cash payments, or who received public assistance benefits in the form of medical services prior to July 1, 1994, and are still receiving the benefits, through the department of human services, or benefits from the [supplemental security income] Supplemental Security Income program under the Social Security Administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes; and

(B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver/owner under subparagraphs (A) and (B) may secure motor vehicle insurance coverage through the plan at the individual's option; provided any previous motor vehicle insurance policy has expired or has been canceled. Any person becoming eligible for plan coverage under subparagraph (A) shall first exhaust all paid coverage under any motor vehicle insurance policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible under rules adopted by the commissioner under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of this chapter [431] upon the issuance of a valid motor vehicle insurance identification card pursuant to section 431:10C-107; and

(3) Under the joint underwriting plan, the required motor vehicle policy coverages as provided in section 431:10C-301 shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered in conformance with section 431:10C-301, and optional additional coverages shall be offered in conformance with section 431:10C-302, for each class except [that] the class defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 1999.)

ACT 143 H.B. NO. 177

A Bill for an Act Relating to Harassment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 604-10.5, Hawaii Revised Statutes, is amended by amending subsections (d), (e), and (f) to read as follows:

"(d) A petition for relief from harassment shall be in writing and shall allege that a [recent] past act or acts of harassment may have occurred, or that threats of harassment make it probable that acts of harassment may be imminent; and shall be accompanied by an affidavit made under oath or statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.

(e) Upon petition to a district court under this section, the court may temporarily restrain [for a period of fifteen days,] the person or persons named in the petition from harassing the petitioner [if the alleged harassment has caused the petitioner substantial emotional distress.] upon a determination that there is probable cause to believe that a past act or acts of harassment have occurred or that a threat or threats of harassment may be imminent. The court may issue an ex parte temporary restraining order either in writing or orally[,]; provided that oral orders shall be reduced to writing by the close of the next court day following oral issuance.

(f) A temporary restraining order that is granted under this section shall remain in effect at the discretion of the court for a period not to exceed ninety days from the date the order is granted. A hearing on the petition to enjoin harassment shall be held within fifteen days after [it is filed.] the temporary restraining order is granted. In the event that service of the temporary restraining order has not been effected before the date of the hearing on the petition to enjoin, the court may set a new date for the hearing; provided that the new date shall not exceed ninety days from the date the temporary restraining order was granted.

The parties named in the petition may file or give oral responses explaining, excusing, justifying, or denying the alleged act or acts of harassment. The court shall receive [such] all evidence [as] that is relevant at the hearing, and may make independent inquiry.

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it may enjoin for no more than three years further harassment of the petitioner, or that harassment as defined in paragraph (2) of that definition exists, it shall enjoin for no more than three years further harassment of the petitioner; provided that this paragraph shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this [subsection] section shall be served upon the respondent. For the purposes of this section, "served" shall mean actual personal service, service by certified mail, or proof that the respondent was present at the hearing in which the court orally issued the injunction.

Where service of a restraining order or injunction has been made or where the respondent is deemed to have received notice of a restraining order or injunction order, any knowing or intentional violation of the restraining order or injunction order shall subject the respondent to the provisions in subsection (h).

Any order issued shall be [served by regular mail upon] transmitted to the chief of police of [each] the county[.] in which the order is issued by way of regular mail, facsimile transmission, or other similar means of transmission."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 144 H.B. NO. 424

A Bill for an Act Relating to Forest Reserves.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a sustainable forest products industry can help revitalize rural economies and expand local business activities after the downsizing of Hawaii's sugar industry. This can be done without compromise, and in fact, enhance the watershed and native resource values of Hawaii's public forest reserves.

Responsible management and utilization of public forest resources are integral components of a sustainable forest products industry. The forest reserve system was set up to be as self-sustaining as possible, but public land managers have been using revenue from timber and other forest products to fund essential forest management work. Existing budgets allow for only sixty acres per year to be harvested and reforested sustainably. Thus, the commercial management of public forests makes little contribution to the recovery and growth of Hawaii's economy. Reforestation and other essential forest management projects must be funded if sustainable commercial harvesting operations are to contribute significantly to the management of the forest reserve system and to the economy.

The legislature further finds that a portion of the value derived from the use of existing forest resources should be reinvested in order to reforest and manage harvested areas and to more effectively manage other forest resources within the forest reserve system. Revenues derived from the harvest of plantation and naturalized non-native forest resources can support the reforestation and management of harvested areas, and also contribute to the enhanced management of native forest resources and critical watersheds. Furthermore, harvesting operations will create jobs and demand for value-added processing facilities. This can all be accomplished without negatively impacting existing general funds or existing native forest resources.

The purpose of this Act is to:

(1) Provide for the reforestation and maintenance of timber management areas;

(2) Enhance the management of public forest reserves in order to improve Hawaii's natural environment and economy; and

(3) Develop environmental education and training programs for the public.

The purposes set forth are intended to be funded through the reinvestment of income derived from the harvesting of forest products from forest reserves and the sale of tree seedlings from state nurseries.

SECTION 2. Section 183-16, Hawaii Revised Statutes, is amended to read as follows:

"**§183-16 Income from forest [reserve.] reserves.** (a) Any moneys accrued from:

(1) The harvest of non-native forest products from forest reserves;

(2) The harvest of native forest products from degraded forests as defined in section 186-5.5, within forest reserves;

(3) The sale of forest products found dead and lying on the ground; or

(4) The sale of tree seedlings from state nurseries;

shall be deposited into the forest stewardship fund.

[In case any] (b) Any other moneys [accrue] accrued from any forest reserve[,] or the products thereof[, or the sale of tree seedlings from state nurseries, the moneys] shall be deposited [with the state director of finance to the credit of] into the general fund."

SECTION 3. Section 195F-3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§195F-3[]] Establishment of the forest stewardship program.** (a) There is established a forest stewardship program to be administered by the board to assist private landowners in managing, protecting, and restoring important watersheds, native vegetation, timber resources, fish and wildlife habitats, isolated populations of rare and endangered plants, and other lands that are not recognized as potential natural area reserves.

(b) The program shall reimburse landowners for a portion of the landowners' total costs in developing and implementing approved forest stewardship management plans[, as set forth in] pursuant to this chapter.

(c) The program shall assist in the forest stewardship of public lands and in developing education and training programs for sustainable forestry pursuant to section 195F-4(a)(2)."

SECTION 4. Section 195F-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established a special fund within the state treasury known as the forest stewardship fund [from which payments] which shall be used as follows:

(1) Payments shall be made by the board pursuant to agreements entered into with qualified landowners to further the purposes of this chapter[.]; and

(2) Moneys collected from the harvest of non-native forest products from forest reserves, from the harvest of native forest products from degraded forests as defined in section 186-5.5, within forest reserves, from forest products found dead and lying on the ground, or from the sale of tree seedlings from the state nurseries, shall be used for the following activities:

(A) Replanting, managing, and maintaining designated timber management areas;

(B) Enhancing the management of public forest reserves with an emphasis on restoring degraded koa forests; and

(C) Developing environmental education and training programs pertaining to sustainable forestry;

provided that funding for the purposes described in subparagraphs (B) and (C) may not occur unless the activities described in approved management plans pertaining to subparagraph (A) are adequately funded."

SECTION 5. Section 195F-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The board shall submit annually a detailed report to the governor and legislature [setting forth] that shall:

(1) Identify management objectives that have been completed[,] on private lands resulting from payments made pursuant to section 195F-4(a)(1)

and provide an analysis of problems and issues encountered in meeting or failing to meet objectives as set forth in the management plans[, the financial condition of the fund, and management objectives for the next year.];

(2) Identify all reforestation, forest management, education, and training objectives that have been completed as a result of any expenditures made pursuant to section 195F-4(a)(2);

(3) Describe the financial condition of the fund, including receipts and expenditures from the previous fiscal year; and

(4) Set forth plans and management objectives for the next fiscal year."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 145 H.B. NO. 440

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to: [law]

(1) Law enforcement officers[;], investigative agents of federal, state, or county law enforcement agencies[;], prosecuting attorneys[;], or the attorney general, [in furtherance of criminal investigations or prosecutions within their respective jurisdictions;] provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal investigation[.] or prosecution; or

(2) Registrants authorized under chapters 448, 453, 460, and 463E who are registered to administer, prescribe, or dispense controlled substances; provided that the information disclosed relates only to the registrant's own patient.

Information disclosed to a registrant under this section shall be transmitted by certified mail or a similar means requiring the registrant's signature for delivery of the information."

SECTION 2. There is appropriated out of the controlled substance registration revolving fund the sum of $50,862, or so much thereof as may be necessary for fiscal year 1999-2000, for one full-time equivalent (1.00 FTE) data processing systems analyst IV position and other current expenses to carry out the purpose of this Act. The sum appropriated shall be expended by the department of public safety.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 146

H.B. NO. 460

A Bill for an Act Relating to Check Cashing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
CHECK CASHING

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

"Check" means any check, draft, money order, or other instrument for the transmission or payment of money. "Check" does not include a traveler's check or foreign denomination or foreign drawn payment instrument.

"Check casher" means a person or entity that engages in the business of cashing checks for a fee.

"Deferred deposit" means a transaction in which a check casher refrains from depositing a personal check written by a customer until a date after the transaction date, pursuant to a written agreement.

"Fee" includes any payment of cash or other consideration paid or given by a customer to a check casher in exchange for the cashing of a check, including an exchange of value for the purchase of catalog items, which is in excess of regular retail value, or for coupons, which may be redeemed for goods or services.

§ -2 **Posting and notice of fees charged.** Any person who cashes one or more checks for a fee shall:

(1) Post in a conspicuous place in every location at which the person does business a notice that sets forth:
   (A) The fees charged for cashing a check, for selling or issuing a money order, and for the initial issuance of any membership or identification cards; and
   (B) That consumer complaints about the check cashing business may be filed with the department of commerce and consumer affairs, and includes and identifies the telephone number of the consumer information service of the department of commerce and consumer affairs;
(2) Provide written notice to each customer of the fees charged for cashing checks that is separate from and in addition to any posted notice;
(3) Obtain a written acknowledgement from the customer that written notice of the fees charged for cashing checks was provided; and
(4) Provide each customer a receipt documenting any and all fees charged.

§ -3 **Authorized fees.** Except as provided in section -4, no check casher shall charge fees in excess of the following amounts:

(1) Five per cent of the face amount of the check or $5, whichever is greater;
(2) Three per cent of the face amount of the check or $5, whichever is greater, if the check is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the check;

(3) Ten per cent of the face amount of a personal check or money order, or $5, whichever is greater; or

(4) No more than $10 to set up an initial account and issue an optional membership or identification card, and no more than $5 for a replacement optional identification card.

The fees allowed in this section shall not be assessed in any transaction or agreement in which the check casher defers deposit of the check.

§ **-4 Deferred deposits, when allowed.** (a) No check casher may defer the deposit of a check except as provided in this section.

(b) Each deferred deposit shall be made pursuant to a written agreement that has been signed by the customer and the check casher or an authorized representative of the check casher. The written agreement shall contain a statement of the total amount of any fees charged for the deferred deposit, expressed both in United States currency and as an annual percentage rate. The written agreement shall authorize the check casher to defer deposit of the personal check until a specific date not later than thirty-one days from the date the written agreement was signed. The written agreement shall not permit the check casher to accept collateral.

(c) The face amount of the check shall not exceed $300 and the deposit of a personal check written by a customer pursuant to a deferred deposit transaction may be deferred for no more than thirty-one days. A check casher may charge a fee for deferred deposit of a personal check in an amount not to exceed fifteen per cent of the face amount of the check. Any fees charged for deferred deposit of a personal check in compliance with this section shall be exempt from chapter 478.

(d) A check casher shall not enter into an agreement for deferred deposit with a customer during the period of time that an earlier agreement for a deferred deposit for the same customer is in effect. A deferred deposit transaction shall not be repaid, refinanced, or consolidated by or with the proceeds of another deferred deposit transaction.

(e) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to or governed by chapter 490. Instead, the check casher may charge and recover a fee for the return of a dishonored check in an amount not greater than $20.

(f) No amount in excess of the amounts authorized by this section and no collateral products such as insurance shall be directly or indirectly charged by a check casher pursuant or incident to a deferred deposit agreement.

§ **-5 Exemptions.** This chapter shall not apply to:

(1) Any person who is principally engaged in the bona fide retail sale of goods or services, and who, either as incident to or independent of the retail sale or service, from time to time cashes items for a fee or other consideration, where not more than $2, or two per cent of the amount of the check, whichever is greater, is charged for the service; or

(2) Any person authorized to engage in business as a bank, trust company, savings bank, savings and loan association, financial services loan company, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia.

§ **-6 Penalties.** (a) Any person who violates this chapter shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2(a). Aggrieved consumers may seek those remedies set forth in section 480-13(b).

(b) Any person who is not a consumer and is injured by a wilful violation of the chapter may bring an action for the recovery of damages, a proceeding to restrain and enjoin those violations, or both. If judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages, whichever sum is greater, and reasonable attorneys' fees together with the costs of suit.

(c) A wilful violation of this chapter shall be punishable by a fine of up to $500 and up to thirty days imprisonment.

(d) A customer who enters into a written deferred deposit agreement and offers a personal check to a check casher pursuant to that agreement shall not be subject to any criminal penalty for failure to comply with the terms of that agreement unless the check is dishonored because the customer closed the account or stopped payment on the check.

§ **-7 Other relief available.** The penalties provided in this chapter are in addition to penalties and remedies otherwise available against the same conduct under the common law or other state or federal statutes or rules."

SECTION 2. This Act shall take effect on July 1, 1999, and shall be repealed on July 1, 2001.

(Approved June 28, 1999.)

ACT 147 H.B. NO. 700

A Bill for an Act Relating to the Office of Hawaiian Affairs Budget.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

"Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the office of Hawaiian affairs followed by a designated number for the program.

"Means of Financing", or "MOF", means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. Letter symbols following appropriations have the following meanings:

A: General funds

T: Trust funds

"Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

SECTION 3. The following sums, or so much thereof as may be necessary to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 1999, and ending June 30, 2001. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceiling indicated for each year, except as provided elsewhere in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
Office of Hawaiian Affairs							
1.	OHA100	POLICY AND ADMINISTRATION		5.50*		5.50*	
		OPERATING	OHA	212,593A		212,593A	
				16.50*		16.50*	
			OHA	623,595T		623,595T	
2.	OHA101	ADMINISTRATIVE SERVICES		2.50*		2.50*	
		OPERATING	OHA	301,488A		301,488A	
				7.50*		7.50*	
			OHA	487,318T		487,318T	
3.	OHA102	PUBLIC INFORMATION		1.25*		1.25*	
		OPERATING	OHA	190,670A		190,670A	
				3.25*		3.25*	
			OHA	275,000T		275,000T	
4.	OHA103	HEALTH AND HUMAN SERVICES		.75*		.75*	
		OPERATING	OHA	362,730A		362,730A	
				1.75*		1.75*	
			OHA	408,355T		408,355T	
5.	OHA104	PLANNING AND RESEARCH		2.00*		2.00*	
		OPERATING	OHA	230,153A		198,894A	
				6.50*		6.50*	
			OHA	422,575T		391,317T	
6.	OHA105	CULTURE					
		OPERATING	OHA	4,540A		4,540A	
				3.00*		3.00*	
			OHA	86,960T		86,960T	
7.	OHA106	GOVERNMENT AFFAIRS		.75*		.75*	
		OPERATING	OHA	41,561A		41,561A	
				1.75*		1.75*	
			OHA	89,199T		89,199T	
8.	OHA107	LAND AND NATURAL RESOURCES		1.25*		1.25*	
		OPERATING	OHA	530,843A		530,843A	
				3.75*		3.75*	
			OHA	636,447T		636,447T	
9.	OHA108	ECONOMIC DEVELOPMENT		2.75*		2.75*	
		OPERATING	OHA	395,475A		395,475A	
				8.25*		8.25*	
			OHA	613,494T		613,494T	
10.	OHA109	EDUCATION		.75*		.75*	
		OPERATING	OHA	244,876A		244,876A	
				2.25*		2.25*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
			OHA	307,769T		307,769T	
11.	OHA110	HOUSING					
				1.00*		1.00*	
		OPERATING	OHA	35,993A		35,993A	
				2.50*		2.50*	
			OHA	97,412T		97,412T	

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. Provided that of the funds appropriated for planning and research (OHA 104), the sum of $31,259 in general funds and $31,258 in trust funds for fiscal year 1999-2000 shall be used for the purpose of developing a comprehensive Hawaiian master plan; provided further that a working group be comprised to develop the Hawaiian master plan; provided further that representatives of the following organizations shall be invited to form a working group: Hawaiian Services Institutions and Agencies Organization, Office of Hawaiian Affairs, Alu Like, Kamehameha Schools Bishop Estate, Department of Hawaiian Home Lands, Queen Liliuokalani Children's Center/Liliuokalani Trust, Papa Ola Lokahi, Lunalilo Home, Queen's Health System, Native Hawaiian Legal Corporation, Bishop Museum, E Ola Mau, Native Hawaiian Bar Association, Native Hawaiian Education Council, and Statewide Homestead Association; provided further that participation in the working group shall not be limited to representatives of these organizations; provided further that in developing the Hawaiian master plan: (A) the working group be formed no later than July 31, 1999; (B) independent consultants provide an objective analysis of the strengths and weaknesses of existing related master plans to the working group no later than October 31, 1999; (C) the working group conduct statewide informational community meetings to discuss the concept of the Hawaiian master plan and to gather input between July 31, 1999 through October 31, 1999; (D) the working group complete an initial draft of the Hawaiian master plan (with the assistance of independent consultants) no later than June 30, 2000, (E) the working group revise the initial draft no later than August 31, 2000; (F) the working group finalize the Hawaiian master plan no later than October 31, 2000; and (G) the working group distribute the Hawaiian master plan to the public no later than December 31, 2000; provided further that any general funds not expended for this purpose shall be lapsed to the general fund; and provided further that the office of Hawaiian affairs shall submit a report regarding the status of this master plan to the legislature no less than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 6. Provided that whenever the need arises, the board of trustees for the office of Hawaiian affairs is authorized to transfer sufficient funds and positions between programs for research and development and operating purposes; provided further that these transfers shall not be inconsistent with legislative intent; and provided further that a report shall be made to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 7. Provided that, except as otherwise appropriated or authorized, the office of Hawaiian affairs and the State of Hawaii shall share proportionately in the costs of wages and fringe benefits for employees of the office of Hawaiian affairs; provided further that, for the purposes of this Act, "fringe benefits" means benefits received by public employees, including hospital, medical, and dental care under the public employees health fund, and temporary disability insurance, workers' compensation, social security, and retirement benefits.

SECTION 8. In the event manifest clerical, typographical, or other mechanical error are found in this Act, the board of trustees is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 9. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 148 H.B. NO. 978

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State's diversified agriculture is at a critical juncture. Over the years, the State invested public funds for diversified agriculture research and development. This investment is now coming to fruition. With the closures of most of the State's sugar plantations, prime agricultural land, water, and an agriculturally oriented labor force are now available for agricultural development and expansion. Financing is one of the critical elements required to foster diversified agriculture's growth to further contribute to Hawaii's economy. Agricultural lending poses higher risks in comparison to conventional commercial lending. Unlike most other industries, agriculture is not only susceptible to competition, increasing operating costs, increasing government regulations, changing consumer preferences, changing demographics, etc., but is also affected by adverse weather conditions, insect and disease pests, urban encroachment, etc. These factors make agricultural lending a high-risk proposition and private lenders base much of their lending criteria on risks and benefits.

This Act encourages private lenders to provide financing for diversified agriculture by reducing private lenders' risks through the department of agriculture's loan guarantee. This new program further encourages private lenders to provide financing by virtue of streamlined program procedures as there is no requirement for prior credit denials as is the case for department loans, generally, or for department insured loans.

SECTION 2. Chapter 155, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§155- Loans guaranteed by the department.** (a) The department of agriculture may guarantee up to ninety per cent of the principal balance of a loan, plus interest due thereon, made to a qualified farmer or cooperative by a private lender; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans guaranteed under this section, section 155-5, and section 155-6 exceed $10,000,000.

(b) Loans guaranteed under this section shall be limited by the provisions of sections 155-9 through 155-13 for purposes of class "A", "B", "C", and "E". No class "D" and "F" loans shall be made under this section.

(c) Loans made under this section shall not be subject to the restrictions in section 155-3.

(d) Interest charged on a guaranteed loan made under this section shall not be more than two percentage points above the prime rate charged by the lender.

(e) When the application for a guaranteed loan has been approved by the department, the department shall issue to the lender a guaranty for that percentage of the loan on which it guarantees payment of principal and interest. The lender shall collect all payments from the borrower and otherwise service the loan.

(f) In return for the department's guaranty, the lender shall remit a one-time insurance fee of two per cent on the principal amount of the guaranteed portion of the loan, at the time the loan is booked, except that for the following loans a reduced fee of one per cent shall be paid:

(1) Loans of $75,000 or less with a maturity exceeding twelve months;

(2) All guaranteed loans with a maturity of twelve months or less.

This fee may be paid by the borrower as a cost for the loan.

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the department shall issue, on request of the lender, a check for the percentage of the overdue payment guaranteed, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The department shall be reimbursed for any amounts so paid plus interest at the applicable rate, where payment is collected from the borrower.

(h) Under conditions specified in department rules, the lender may request that a portion or all of the guaranteed percentage of the principal balance of the loan be converted to a participating share held by the department subject to section 155-6.

(i) Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the department. Within thirty days of the notification, the department may elect to request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

(j) The lender may reduce the percentage of the principal balance guaranteed under this section at any time."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 149 H.B. NO. 985

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 103, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

"§103- **Definitions.** The definitions of chapter 103D shall apply to this chapter unless the context clearly requires otherwise."

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding to part IV four new sections to be appropriately designated and to read as follows:

"§103D- **Indigenous and Polynesian introduced plants; use in public landscaping.** (a) Wherever and whenever feasible, all plans, designs, and specifications for new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, or housing developed by the State with public moneys shall incorporate indigenous land plant species as defined in section 195D-2, and plant species brought to Hawaii by Polynesians before European contact, such as the kukui, noni, and coconut; provided that:

(1) Suitable cultivated plants can be made available for this purpose without jeopardizing wild plants in their natural habitat; and
(2) Wherever and whenever possible, indigenous plants shall be used for landscaping on the island or islands on which the species originated.

(b) Each plant or group of plants used pursuant to subsection (a) shall be clearly identified with signs for the edification of the general public.

§103D- **Provisions for pollution control.** All contracts shall make provisions for control of pollution when encountered in the performance of the contract.

§103D- **Energy efficiency through life-cycle costing.** (a) The procurement practices of the State shall include energy efficient standards and policies, including life-cycle costing.

(b) In implementing life-cycle costing, the purchasing agency shall be guided by energy efficiency standards and policies for purchasing various items developed and promulgated by the United States Department of Energy and other federal agencies, and nationally recognized trade associations, including but not limited to the National Association of State Purchasing Officials, the National Institute of Governmental Purchasing, Inc., the National Association of Purchasing Management, and the Air Conditioning and Refrigeration Institute. The purchasing agency shall notify bidders of information, procedures, and forms required in implementing energy efficiency standards and policies. The information required shall include purchasing standards and policies developed by federal agencies and by nationally recognized agencies and associations, as well as energy consumption and life-cycle cost data.

(c) The purchasing agency shall consider purchasing via the life-cycle costing method those classes of items for which nationally recognized energy efficiency data have been developed. These items shall include but not be limited to automobiles and air conditioning systems. The watt-saving variety of common-sized fluorescent lamps shall be purchased except where standard wattage of those lamps is specifically required by the using agency.

§103D- **Value engineering clauses.** The State shall insert clauses providing for value engineering incentives in all public works contracts for amounts in excess of $250,000. The clauses shall provide:

(1) That cost reduction proposals submitted by contractors:
    (A) Must require, in order to be applied to the contract, a change order thereto; and
    (B) Must result in savings to the State or county, as the case may be, by providing less costly items than those specified in the contract without impairing any of their essential functions and character-

istics such as service life, reliability, substitutability, economy of operation, ease of maintenance, and necessary standardized features;

and

(2) That accepted cost reduction proposals shall result in an equitable adjustment of the contract price so that the contractor will share a portion of the realized cost reduction."

SECTION 3. Chapter 103D, Hawaii Revised Statutes, is amended by adding to part X four new sections to be appropriately designated and to read as follows:

"**§103D- Taxpayer preference.** For evaluation purposes, the bidder's tax-exempt price shall be increased by the applicable retail rate of general excise tax and the applicable use tax. For competitive sealed bids, the lowest responsive, responsible bidder, taking into consideration the above increase, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the price offered and shall not include the amount of the increase.

§103D- Preference for qualified community rehabilitation programs. When a governmental body contracts for services, a five per cent preference shall be given to services to be provided by nonprofit corporations or public agencies operating qualified community rehabilitation programs in conformance with criteria established by the department of labor and industrial relations pursuant to chapter 91; provided that contracts awarded under this section shall be exempt from the wages provision of section 103-55. The policy board shall adopt rules under chapter 91 to establish the preference for nonprofit corporations or public agencies operating qualified community rehabilitation programs consistent with this section.

§103D- Purchases from qualified community rehabilitation programs. (a) Any governmental body, without advertising or calling for bids, may purchase goods or services provided by qualified community rehabilitation programs serving persons with disabilities that have indicated an interest in supplying the goods or services and on an equitable basis may apportion the business among the interested programs; provided that the goods and services meet the specifications and needs of the purchasing agency and are purchased at a fair market price as determined by the appropriate public agency; and provided further that the programs comply with the following:

(1) Meet all of the requirements of a qualified community rehabilitation program under section 103D-1001; and

(2) Maintain a disabled to non-disabled employee ratio equal to or in excess of three-to-one for work hours of direct labor at all times on the work contracted.

(b) The purchasing agency shall:

(1) Receive and review proposals submitted by qualified community rehabilitation programs to provide goods or services and determine if they are suitable for purchase by the agency;

(2) Negotiate the conditions and terms for the purchase, including the price of the offer, between the agency and the qualified community rehabilitation program; provided that the price of the offer shall not exceed the fair market price and there is assurance that the qualified community rehabilitation program proposal is in compliance with all administrative rules related to purchasing; and

(3) Ensure that any goods or service purchased from a qualified community rehabilitation program shall not be placed on the Hawaii products list under section 103D-1002.

§103D- Qualified community rehabilitation program; proposal to provide goods and services. A qualified community rehabilitation program shall be allowed to sell only goods or services, also to include building custodial and grounds maintenance services, to a governmental body. A proposal shall be submitted to the purchasing agency containing the following information:

(1) A description of the goods or service;
(2) The price of the goods or service; and
(3) Documents and information necessary to qualify as a qualified community rehabilitation program under section 103D-1001."

SECTION 4. Section 103D-1001, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

"'"Direct labor" means all work required for preparation, processing, or packing of goods or performance of services, but not work relating to supervision, administration, inspection, or shipping.

"Fair market price" means the price of a product or service paid by a willing buyer to a willing seller, that is reasonably comparable to prices on the open market.

"Person with disabilities" means any person who is so severely incapacitated by any physical or mental disability that the person cannot engage in normal competitive employment because of the disability.

"Public agency" means any agency of the State or county.

"Qualified community rehabilitation program" means a nonprofit community rehabilitation program for persons with disabilities that:

(1) Is organized and incorporated under the laws of the United States or this State, and located in this State;
(2) Is operated in the interest of and employees[1] persons with disabilities;
(3) Does not inure any part of its net income to any shareholder or other individual;
(4) Complies with all applicable occupational health and safety standards required by the federal, state, and county governments; and
(5) Holds a current certificate from the United States Department of Labor pursuant to the Fair Labor Standards Act, Title 29 United States Code section 214(c), and is certified by the state department of labor and industrial relations under section 387-9 and applicable administrative rules relating to the employment of persons with disabilities."

SECTION 5. Section 76-55, Hawaii Revised Statutes, is amended to read as follows:

"§76-55 Membership of civil service. All regular employees and all other employees having a permanent appointment in civil service pursuant to law shall constitute the membership of the civil service, but no employee shall be entitled to membership in civil service unless the employee has been appointed in accordance with law and has satisfied all requirements for employment, including those prescribed by [sections 78-1 and 103-57.] section 78-1."

SECTION 6. Section 103-11, Hawaii Revised Statutes, is amended to read as follows:

"**§103-11 Rules of comptroller [regulating expenditures; violations, penalty].** [Subject to chapter 91 the] The comptroller [may] shall adopt rules[, not inconsistent with law, further controlling and regulating the expenditure of state moneys. The rules shall have the force of law.] pursuant to chapter 91 as necessary, for the purposes of this chapter. Any violation of the rules shall be subject to the penalties prescribed in section 103-9."

SECTION 7. Section 103-32.1, Hawaii Revised Statutes, is amended to read as follows:

"**§103-32.1 Contract provision for retainage.** Any public contract [issued under this chapter] may include a provision for the retainage of a portion of the amount due under the contract to the contractor to insure the proper performance of the contract; provided that [the]:

(1) The sum withheld by the [contracting] procurement officer from the contractor shall not exceed five per cent of the amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the contracting officer may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor[.]; and

(2) The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract."

SECTION 8. Section 103-32.2, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103-32.2[]] Substitution of retainage.** Any other law to the contrary notwithstanding, any public contract [issued under this chapter] may provide that the [contracting] procurement officer may enter into an agreement with the contractor which will allow the contractor to withdraw from time to time the whole or any portion of the sum retained under section 103-32.1 upon depositing with the [contracting] procurement officer any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the [contracting] procurement officer may require that the total market value of such bond be greater than the sum to be withdrawn."

SECTION 9. Section 103-39.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103-39.5[]] Construction, renovation, or repair of school facilities; county permit exemption.** Any [contracts under this chapter] contract for the construction, renovation, or repair of public school facilities shall be exempt from any requirement of a county that related off-site improvements be made by the contracting government agency as a condition to the issuance of any permit."

SECTION 10. Section 103-55, Hawaii Revised Statutes, is amended to read as follows:

"**§103-55 Wages, hours, and working conditions of employees of contractors [supplying] performing services.** (a) Before any [prospective bidder is entitled to submit any bid for the performance of any] offeror enters into a contract to [supply] perform services in excess of [$5,000 to] $25,000 for any governmental

agency, the [bidder] offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) No contract to perform services for any governmental contracting agency in excess of [$5,000] $25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the [contracting] procurement officer. [Payment in the final settlement] Final payment of a contract or release of bonds or both shall not be made unless the [contracting] procurement officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of [$5,000] $25,000 to enforce this section.

(c) This section shall apply to all contracts to perform services in excess of [$5,000,] $25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

(1) Managerial, supervisory, or clerical personnel.
(2) Contracts for supplies, materials, or printing.
(3) Contracts for utility services.
(4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16[.], paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77.
(5) Contracts for professional services.
[(5)] (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
[(6)] (7) Contracts with nonprofit institutions."

SECTION 11. Section 103-72, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103-72[]] Transcription of instructional materials.** Contracts for the procurement of instructional materials shall include a provision whereby the State has the right to transcribe and reproduce the material in braille, large print, recordings, or other media for the use of [handicapped] physically-disabled students, including the visually [handicapped,] impaired, unable to use the material in conventional print and form. Such right shall include the right to make those corrections, revisions, and other modifications as may be necessary."

SECTION 12. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

(1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
(2) To disburse funds, irrespective of their source:

(A) For grants[,] or subsidies[, or purchases of services] as those terms are defined in section [42D-1,] 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;

(B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;

(C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;

(D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;

(E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;

(F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;

(G) To governmental bodies of the State; [and]

(H) As loans, under loan programs administered by a governmental body; and

(I) For contracts awarded in accordance with the provisions of chapter 103F;

(3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision; [provided that University of Hawaii departments and programs, without regard to this chapter, may procure goods and services from the University of Hawaii bookstores that are routinely stocked and marketed and not specially ordered;

(4) To procure goods or services for the office of intercollegiate athletics of the University of Hawaii at Manoa with moneys from the University of Hawaii at Manoa intercollegiate athletics revolving fund;

(5)] (4) To procure the following goods or services[, including the following:] which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:

(A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;

(B) Works of art for museum or public display;

(C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;

(D) Meats and foodstuffs for the Kalaupapa settlement;

(E) Opponents for athletic contests;

(F) Utility services whose rates or prices are fixed by regulatory processes or agencies;

(G) Performances, including entertainment, speeches, and cultural and artistic presentations;

(H) Goods and services for commercial resale by the State;

(I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds; [and

(J) Travel arrangements purchased by the University of Hawaii for its intercollegiate athletic programs;

which the policy board determines by rule or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and]

(J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State; and

(K) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and

[(6)] (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:

(A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and

(B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

SECTION 13. Section 103D-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The policy board shall consist of seven members. Notwithstanding the limitations of section 78-5, the members of the board shall include:

(1) The comptroller;

(2) A county employee with significant high-level procurement experience; and

(3) Five persons who shall not otherwise be full-time employees of[, or contractors with,] the State or any county; provided that at least one member shall be a certified professional in the field of procurement, at least one member shall have significant high-level, federal procurement experience, and at least two members shall have significant experience in the field of health and human services.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy board. The initial and subsequent members of the policy board, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy board members shall be subject to the requirements of section 26-34. No member of the policy board shall act concurrently as a chief procurement officer. The members of the policy board shall devote such time to their duties as may be necessary for the proper discharge thereof."

SECTION 14. Section 103D-203, Hawaii Revised Statutes, is amended to read as follows:

"**§103D-203 Chief procurement officers.** (a) The chief procurement officer for each of the following state entities shall be:

(1) The judiciary—the administrative director of the courts;
(2) The senate—the president of the senate;
(3) The house of representatives—the speaker of the house of representatives;
(4) The office of Hawaiian affairs—the chairperson of the board;
[(5) The University of Hawaii—the president of the University of Hawaii;
(6)] (5) The department of education, excluding the Hawaii public library system—the superintendent of education; and
[(7)] (6) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.

(b) The chief procurement officers for each of the several counties shall be:

(1) The executive branch—the respective finance directors of the several counties[; and], except as provided in paragraphs (3) and (4);
(2) The legislative branch—the respective chairpersons of the councils of the several counties;
(3) The Honolulu, Kauai, and Maui boards or departments of water supply—the managers and chief engineers of the respective boards or departments of water supply as designated by county charter; and
(4) The Hawaii board of water supply—the manager of the board of water supply as designated by county charter;

provided that the chief procurement officers designated under paragraphs (1) [and], (2), (3), and (4) shall not exercise their powers or duties over contracting in a manner contrary to the respective county's charter, ordinances, or rules adopted in accordance with chapter 91.

(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, department of education, [University of Hawaii,] remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, "State" shall mean "judiciary," "state senate," "state house of representatives," "office of Hawaiian affairs," "department of education," ["University of Hawaii,"] "executive branch," [and] "county," and "board of water supply," or "department of water supply," respectively."

SECTION 15. Section 103D-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [No contract] Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding [or of] nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of [the University of Hawaii,] the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal

year of each term of the multi-year contract; provided further that [this] the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance[.], or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order."

SECTION 16. Section 103D-321, Hawaii Revised Statutes, is amended to read as follows:

"**§103D-321 Record of procurement actions.** (a) The chief procurement officer shall maintain a record of all procurements for goods, services, or construction of $25,000 or more made under sections [103D-102(b)(5)],[1] 103D-102(b)(4), 103D-304, 103D-306, and 103D-307 for a minimum of five years. The record shall contain:

(1) Each contractor's name;
(2) The amount and type of each contract; and
(3) A listing of the goods, services, or construction procured under each contract.

(b) A copy of the record shall be submitted to the legislature on an annual basis. The record shall be available for public inspection."

SECTION 17. Section 103D-703.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103D-703.5[]] Settlement [on performance bonds.] of default by contractor.** Upon default of a contractor, the purchasing agency may accept moneys in satisfaction of the contractor's obligation on a contract whether the moneys are realized from the performance surety's obligation on its bond[.], an insurer's obligation on the contractor's policy, or any other source of moneys paid to satisfy a contractor's default. Such moneys shall be deemed to be trust moneys and shall be deposited into a trust account with and under the control of the purchasing agency. These moneys and the interest earned thereon shall be used for the completion of such contract. Upon completion of the contract, any excess moneys shall be deposited in the general fund unless otherwise restricted."

SECTION 18. Section 103D-1001.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103D-1001.5[]] Application of this part.** The preferences in this part shall apply, when applicable, to procurements made pursuant to [sections] section 103D-302 [and], or 103D-303[.], or both."

SECTION 19. Section 103D-1003, Hawaii Revised Statutes, is amended to read as follows:

"**§103D-1003 Printing, binding, and stationery work.** (a) All bids [or proposals] submitted for a printing, binding, or stationery section 103D-302 contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, to include storage and shipping costs, shall receive a fifteen per cent preference for purposes of bid [or proposal] evaluation.

(b) Where bids [or proposals] are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid [or evaluating proposals] submitted only, the amount bid [or proposed] for work performed out-of-state shall be increased by fifteen per cent. The lowest total [offer,] bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference."

SECTION 20. Section 103D-1007, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) In any section 103D-302 or 103D-303 contract for a public works project, a state agency shall award the contract to [a bidder] an offeror who has filed all state tax returns due to the State and paid all amounts owing on such returns for two successive years prior to submitting the [bid;] offer; provided that the amount of that [bid] offer is not more than seven per cent higher than the amount [bid] offered by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the [bid] offer by the state tax paying [bidder] offeror is $5,000,000 or less.

(d) In any section 103D-302 or 103D-303 contract for a public works project, a state agency shall award the contract to [a bidder] an offeror who has filed all state tax returns due to the State and paid all amounts owing on such returns for four successive years prior to submitting the [bid;] offer; provided that the amount of that [bid] offer is not more than seven per cent higher than the amount [bid] offered by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the [bid] offer by the state tax paying [bidder] offeror is more than $5,000,000."

SECTION 21. Section 103D-1206, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103D-1206[]] Annual inventory reporting by state officers.** The chief procurement officers for their respective jurisdictions, the administrative heads of the executive departments, and all other persons, offices, and boards of a public character which are not by law under the control and direction of any of the officers specifically named in this section, before September 16 of each year, shall prepare and file with the administrator of the state procurement office an annual inventory return of [all] state property in the possession, custody, control, or use of the officer making the return, or of the department or office of the government over which the officer presides. Any officer, agent, or employee serving in a department or under a returning officer shall file an annual inventory return to the department head or the returning officer. The officer making the return shall similarly file a copy with the administrator of the state procurement office. The annual inventory return shall contain the following:

(1) A summary and list by detailed item description and carrying value of all nonexpendable state property on hand as of July 1 of the year for which the return is made;

(2) A summary and list by detailed item description and carrying value of all nonexpendable state property acquired and disposed of during the year elapsed since the return made as of the preceding July 1; and

[(3) Summary dollar values of expendable property on hand as of July 1 of the year for which the return is made; and

(4)] (3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true,

and correct to the best knowledge, information, and belief of the officer making the return."

SECTION 22. Section 103D-1207, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103D-1207[]] Annual inventory reporting by county mayors to administrator of the state procurement office.** Each county mayor, before September 16 of each year, shall prepare and file with the administrator of the state procurement office an annual inventory return of all nonexpendable state property in the use, custody, or possession for the time being of the county or any of its officers. The annual inventory return shall contain the following:

(1) A summary and list by detailed item description and carrying value of all nonexpendable state property on hand as of July 1 of the year for which the return is made;
(2) A summary and list by detailed item description and carrying value of all nonexpendable state property disposed of during the year elapsed since the return made as of the preceding July 1; and
(3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true, and correct to the best knowledge, information, and belief of the officer making the return."

SECTION 23. Section 103D-1208, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103D-1208[]] Annual inventory reporting by county officers to council.** Every officer, head of department, agent, employee, and other person in the employ of the county, having in their custody or under their control or using property belonging to the county, each year within forty-five days following the close of the county's fiscal year, shall prepare and file with the council of the county an annual inventory return of all nonexpendable county property in the possession, custody, control, or use of the officer, head of department, agent, employee, or other person making the annual inventory return, or of the offices or departments over which the officer presides. The annual inventory return shall contain the following:

(1) A summary and list by detailed item description and carrying value of all nonexpendable county property on hand as of the close of the county's fiscal year for which the return is made;
(2) A summary and list by detailed item description and carrying value of all nonexpendable county property acquired and disposed of during the year elapsed since the return made as of the preceding close of the fiscal year; and
(3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true, and correct to the best knowledge, information, and belief of the officer making the return."

SECTION 24. Section 128-10, Hawaii Revised Statutes, is amended to read as follows:

"**§128-10 Other powers.** The governor further, irrespective of the existence of a civil defense emergency period, may:

(1) Cooperate with the President and the heads of the armed forces, and the civil defense agency of the United States, and with the officers and

agencies of other states in matters pertaining to the civil defense of the State and nation and the incidents thereof, and take any measures which the governor may consider proper to carry into effect any request of the President or the appropriate federal officers and agencies, for any action looking to civil defense;

(2) Lease, lend, or otherwise furnish, on such terms and conditions as the governor may consider necessary to promote the public welfare and protect the interest of the State, any real or personal property of the state government or its political subdivisions, to the President, the heads of the armed forces, or to the civil defense agency of the United States;

(3) On behalf of the State enter into mutual aid agreements or compacts with the federal government and with other states. The agreements or compacts shall be limited to civil defense. It may be provided in an interstate compact, and the governor with the advice and consent of the political subdivisions included within the scope of the compact, may agree on behalf of the State that:

(A) Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of the compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in the state in which normally employed or rendering services;

(B) Whenever any person holds a license, certificate, or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving this skill in any party state to meet an emergency or disaster and the state shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered;

(C) No party state or its officers or employees rendering aid in another state pursuant to the compact shall be liable on account of any act or omission on the part of the forces while so engaged, or on account of the maintenance or use of any materials, equipment, goods, or facilities in connection therewith;

(D) As an alternative to paragraph (C), such other or modified form of immunity as the governor may find acceptable;

(E) Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of the forces in case the members sustain injuries or are killed while rendering aid pursuant to the compact, in the same manner and on the same terms as if the injury or death were sustained within the state;

(F) Any party state rendering aid in another state pursuant to the compact shall be reimbursed by the party state receiving aid, or by the United States government under plans approved by it, for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for all costs incurred in connection with requests for aid; provided that this paragraph shall not be deemed to preclude the State, if it is the aiding state, from assuming in whole or in part the loss, damage, expense, or

other cost, or from loaning the equipment or donating the services to the receiving party state without charge or cost;

(G) Any party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items; the expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it; and

(H) In the event of an evacuation, the party state of which the evacuees are residents shall, after the termination of the emergency or disaster, assume the responsibility for the ultimate support or repatriation of the evacuees;

(4) Sponsor and develop mutual aid plans and agreements for civil defense between the political subdivisions of the State and between one or more political subdivisions and other public or private agencies, for the furnishing or exchange of food, clothing, medicine, and other materials; engineering services, emergency housing; police services; health, medical, and related services; fire fighting, rescue, transportation, and construction services and facilities; personnel necessary to provide or conduct these services; and such other materials, facilities, personnel, and services as may be needed. The mutual aid plans and agreements may be made with or without provisions for reimbursement of costs and expenses, and on such terms and conditions as are deemed necessary;

(5) Order and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for law enforcement, medical, health, fire fighting, traffic control, warnings, and signals, engineering, rescue, construction, emergency housing, and other welfare, hospitalization, transportation, water supply, public information, training, and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request;

(6) Take possession of, use, manage, control, and reallocate any public property, state or county, real or personal, required by the governor for the purposes of this chapter, including, without limitation, airports, parks, playgrounds, and schools, and other public buildings. Whenever the property is so taken the governor shall have power to make such provision for the temporary accommodation of the government service affected thereby as the governor may deem advisable. Like provisions may be made at any time whenever it is necessary to relocate any government service because of any emergency condition;

(7) Utilize all services, materials, and facilities of nongovernmental agencies, relief organizations, community associations, and other civil groups and private agencies that may be made available;

(8) Receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter; establish funds in the treasury for the deposit and expenditure of the moneys; procure federal aid as the same may be available, and apply the provisions of chapter 29 in cases of federal aid even though not in the form of money. The contributions or

grants are appropriated for the purposes of this chapter, or for the special purposes;

(9) Provide for the repair and maintenance of public property, whenever adequate provision therefor is not otherwise made; insure the property against any war risk, including without limitation damage or loss resulting from or arising out of an attack or action in resisting or combating an attack or apparent attack; provide for the restoration, renovation, replacement, or reconstruction of insured property in the event of damage or loss, and make temporary restoration of public utilities and other vital facilities in the event of an attack or other disaster;

(10) Purchase, make, produce, construct, rent, lease, or procure by condemnation or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace, or reconstruct, and distribute, furnish, or otherwise dispose of, with or without charges therefor, materials and facilities for civil defense and other emergency functions; procure federal aid therefor whenever feasible; and take any measures which may, in the governor's opinion, secure, stimulate, or increase similar activities by private or public persons or organizations. Chapter 103D, sections [103-49,] 103-50, 103-50.5, 103-53 [through 103-57], 103-55, 105-1 to 105-10, and 464-4 shall not apply to any civil defense or other emergency functions if and to the extent that the governor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions. In cases of extreme urgency during a civil defense emergency period the governor may suspend the penal provisions of sections 46-45 and 103-9, except those provisions that concern falsification;

(11) Appoint, employ, train, equip, and maintain, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 77, and 79, part II of chapter 88 and section 78-1, such agencies, officers, and other persons as the governor deems necessary to carry out this chapter; determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, provide for and effect the interchange of personnel, by detail, transfer, or otherwise, between the State and any political subdivision, or among any agencies or departments of the State;

(12) Make charges in such cases and in such amounts as the governor deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the government under this chapter; and make charges for licenses or permits to cover administrative expense connected therewith;

(13) Make such contracts as may be necessary to carry out this chapter;

(14) Establish special accounting forms and practices whenever necessary; and

(15) Take any and all steps necessary or appropriate to carry out the purposes of this chapter and to provide for civil defense and other emergency functions.

The powers and authority conferred upon the governor by this chapter are in addition to any other powers or authority conferred upon the governor by the laws of the United States and of the State for the same or a like purpose, and shall not be construed as abrogating, limiting, or modifying any such powers, or authority."

SECTION 25. Section 128-13, Hawaii Revised Statutes, is amended to read as follows:

"**§128-13 Power and authority of local organizations.** Each political subdivision shall have the power and authority:

(1) Deputy director's staff. To provide, for the deputy director of such political subdivision, an assistant or assistants whose appointment shall be approved by the director of civil defense, and such technical, clerical, stenographic, and other personnel, office space, furniture, equipment, supplies, and funds as may be necessary to carry out the purposes of this chapter. Chapter 76 shall apply to the full-time deputy director or the deputy director's first assistant.

(2) Appropriations, etc. To make appropriations and authorize expenditures for the purposes of this chapter, including the power to place under the control of the governor, for expenditure as matching funds for federal aid, or for any purpose within the powers of the governor, moneys appropriated by it; to make appropriations and authorize expenditures for the purposes of this chapter out of the normal revenues or fund balances or surpluses of the political subdivision, notwithstanding any legal restrictions upon the purposes for which the funds may be expended, except[,] that pension and retirement funds, funds set aside for the redemption of bonds or the payment of interest thereon, trust funds, loan funds, and funds received from the federal government or from any person for specific purposes shall not be affected.

(3) Procurement, etc. To purchase, make, produce, construct, rent, lease, or procure by condemnation, or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace or reconstruct, and distribute, furnish or otherwise dispose of, with or without charges, materials and facilities for civil defense; and to procure federal aid therefor whenever feasible. Chapter 103D, sections [103-41 to 103-57,] 103-50, 103-50.5, 103-53, 103-55, 105-1 to 105-10, and 464-4 shall not apply to any civil defense functions of and to the extent that the mayor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions.

(4) Personnel. To provide for the appointment, employment, training, equipping, and maintaining, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 77, 79, and 88 and section 78-1, of such agencies, officers, and other persons as it deems necessary to carry out this chapter; to determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, to provide for the interchange of personnel, by detail, transfer or otherwise, between agencies or departments of the political subdivision, or between political subdivisions.

(5) Contributions. To receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter.

(6) Charges. To make charges in such cases and in such amounts as it deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the political subdivision under this chapter.

(7) Contracts. To make or authorize such contracts as may be necessary to carry out this chapter.

(8) Mutual aid plans. To participate in and carry out mutual aid plans and agreements or compacts, sponsored or developed by the state civil defense agency.

(9) Continuity of government. To insure continuity of government during a civil defense emergency period, the legislative body of a county may by ordinance, unless otherwise provided by law, provide the procedure for the appointment and designation of stand-by officers for the legislative body and the elected chief executive of the county for the emergency period, who shall serve in the event of the unavailability of the officers for whom they stand by."

SECTION 26. Section 382-3, Hawaii Revised Statutes, is amended to read as follows:

"**§382-3 Government operations.** After the issuance of a proclamation pursuant to section 382-2 and during the emergency thereby proclaimed, the governor may seize and take possession of and operate the entire plant and facilities, including related facilities, of any stevedoring company whose operations are suspended or substantially reduced, or so much thereof, or such interest therein, as the governor may deem necessary in order to carry out the purposes of this chapter.

Such government operations may be conducted by the governor through such department or agency of the State as the governor may designate and the governor may delegate to such agency such of the governor's powers as are necessary to conduct the operations.

The governor shall have such power and authority as shall be reasonably necessary to conduct such government operations in a manner consistent with the public health, safety, and welfare, including, without limitation upon the generality of the foregoing, the power to make such contracts and arrangements with ship owners, charterers, agents, and operators, wharf and pier owners and operators, stevedoring companies, trucking operators, warehouse workers and other persons as may be required in order to provide stevedoring services and related services. The governor may make contracts without regard to chapter 103D and sections [103-41 to 103-57] 103-50, 103-50.5, 103-53, and 103-55 and, specifically, the certificate of the comptroller as to the availability of an unexpended appropriation or balance of an appropriation to cover the amount required by any such contract shall not be required."

SECTION 27. Section 103-15, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 103-21, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 103-22.1, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 103-24.6, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 103-49, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 103-53.5, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 103-54, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 103-56, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 103-57, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 103-58, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 103-59, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 103-60, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 103-71, Hawaii Revised Statutes, is repealed.

SECTION 40. Parts III and V of chapter 103, Hawaii Revised Statutes, are repealed.

SECTION 41. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 42. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 150 H.B. NO. 1028

A Bill for an Act Relating to Aloha Tower Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that most redevelopment agencies are permitted to appoint officers, agents, and employees without regard to chapters 76 and 77, Hawaii Revised Statutes (HRS). However, the aloha tower development corporation (ATDC) does not have that flexibility under its current statute.

The purpose of this Act is to authorize ATDC to:

(1) Appoint officers, employees, and agents;
(2) Prescribe their duties and qualifications; and
(3) Fix their salaries;

without regard to chapters 76 and 77, HRS.

SECTION 2. Section 206J-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The development corporation shall have all the powers necessary to carry out its purposes, including the following powers:

(1) To sue and be sued;
(2) To have a seal and alter the same at its pleasure;
(3) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
(4) To make and alter bylaws for its organization and internal management;
(5) To adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, properties, and facilities;

(6) Through its chief executive officer, to appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, consistent with chapters 76 and 77; its chief executive officer may also appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;

(7) To prepare or cause to be prepared a development plan for the Aloha Tower complex, incorporating the needs of the department of transportation and accommodating the plans, specifications, designs, or estimates of any project acceptable to the development corporation;

(8) To own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and to assign, exchange, transfer, convey, lease, sublease, or encumber any project or improvement, including easements, constituting part of a project within the Aloha Tower complex, except that required for necessary maritime purposes, including leases or other agreements for the rehabilitation, repair, maintenance, and operation of the Aloha Tower;

(9) By itself, or in conjunction with qualified persons, to develop, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the development, construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, including projects or any portion thereof under the control or jurisdiction of qualified persons; to own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project, including projects or any portion thereof under the control or jurisdiction of qualified persons;

(10) Notwithstanding any other provision of law to the contrary, to arrange or initiate appropriate action for the planning, replanning, opening, grading, relocating, or closing of streets, roads, roadways, alleys, easements, piers, or other places, the furnishing of facilities, the acquisition of property or property rights, or the furnishing of property, development rights, or services in connection with a project;

(11) To grant options or renew any lease entered into by it in connection with any project, on terms and conditions as it deems advisable;

(12) To prepare or cause to be prepared plans, specifications, designs, and estimates of project cost for the development, construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;

(13) To provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(14) To procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;

(15) To contract for and accept gifts or grants in any form from any public agency or from any other source;

(16) To pledge or assign all or any part of the moneys, rents, charges, or other revenues and any proceeds derived by the development corporation from proceeds of insurance or condemnation awards, less guarantees to the harbor special fund for the loss of revenues or incurrence of costs and expenses because of any action taken by the development corporation; and

(17) To issue bonds of the development corporation for the purpose of providing funds for any of its corporate purposes."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 151 H.B. NO. 1064

A Bill for an Act Relating to Hawaii Hurricane Relief Fund Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) [Should] After each covered event, if the board shall determine that the moneys in the hurricane reserve trust fund, excluding moneys determined by the board to be needed to continue fund operations following that covered event, will be insufficient to pay claims and other obligations of the fund arising out of [a] that covered event, the Hawaii hurricane relief fund is authorized to levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for all property and casualty insurance policies issued for risks insured in this State. These moneys may be deposited into the hurricane reserve trust fund or into trust or custodial accounts, created for the benefit of the fund's secured parties, that are held inside or outside the hurricane reserve trust fund. The formula to calculate the amount and period of the surcharge for each covered event and the procedures and methodology for payment of claims [during periods of insufficiency of moneys for such purpose] and other obligations of the fund shall be provided in the plan of operation[.] and the surcharge may remain in effect until all claims and other obligations of the fund, including but not limited to claims financing transactions, bonds, notes, and other obligations arising out of that covered event, shall have been fully discharged. The amount and reason for any surcharge made pursuant to this subsection shall be separately stated on any billing sent to an insured. The surcharge shall not be considered premiums for any other purpose, including the computation of gross premium tax or the determination of agents' commissions."

SECTION 2. Act 339, Session Laws of Hawaii 1993, as amended by Act 17, Special Session Laws of Hawaii 1995, as amended by Act 222, Session Laws of Hawaii 1997, is amended by amending subsection (d) of section 10 to read as follows:

"(d) The director of finance is authorized to issue reimbursable general obligation bonds in the principal amount of $200,000,000, or so much thereof as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund, and the same sum is appropriated for each of the fiscal years [1996-1997, 1997-1998, and] 1998-1999, 1999-2000, and 2000-2001 for deposit into the hurricane reserve trust fund. The commissioner, upon the commissioner's determination that it is advisable to transfer funds from the hurricane reserve trust fund, shall reimburse the state general fund for payment of debt service on reimbursable general obligation bonds authorized and issued under this section."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 1999.)

ACT 152 H.B. NO. 1115

A Bill for an Act Relating to Foster Boarding Homes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-16, Hawaii Revised Statutes, is amended by amending the definitions of "criminal history record check" and "foster boarding home" in subsection (a) to read as follows:

""Criminal history record check" means an examination of an individual's criminal history record through:

(1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;
(2) Subsequent fingerprint analyses for new hires and rehires; and
(3) [An annual] A name inquiry into the state criminal history record files.

"Foster boarding home" means any boarding home in which [one]:

(1) One or more, but fewer than six, minor children are received; and
(2) Six or more minor siblings are placed together in the best interests of the children,[1]

for care and maintenance apart from their parents or guardians on a twenty-four hour basis for fee or charge."

SECTION 2. Section 346-19.6, Hawaii Revised Statutes, is amended to read as follows:

"[]§346-19.6[] **Criminal history record checks.** The department shall develop standards to assure the reputable and responsible character of operators and employees of child caring institutions, child placing organizations and foster boarding homes as defined in this chapter which shall include but not be limited to criminal history record checks.

An applicant for a certificate of approval shall submit statements signed under penalty of perjury by the operators, employees and new employees of the facility, indicating whether the operators, employees or new employees were ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and employees of the facility shall be fingerprinted for the purpose of complying with the criminal history record check. New employees of the facility shall be fingerprinted within five working days of employment for the purpose of complying with the criminal history record check.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all operators, employees, and new employees of child care facilities subject to licensure pursuant to this section. The Hawaii criminal justice data center may assess the operators, employees or new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained,

and shall be subject to such federal laws and [federal] regulations as may be now or hereafter adopted.

The department may deny a certificate of approval if an operator, employee, or new employee of the facility was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety or well-being of the children in care.

The department shall make a name inquiry into the criminal history records for the first two years of certification of a foster boarding home and annually or biennially thereafter depending on the certification status of the home."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

Note

1. Comma should be underscored.

ACT 153 H.B. NO. 1117

A Bill for an Act Relating to the Child Protective Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 587-2, Hawaii Revised Statutes, is amended:

1. By adding a new definition to be appropriately inserted and to read:

""Abandoned infant" means a child who is three years old or younger and:

(1) Whose parent or parents, as applicable, regardless of any incidental contact or communication with the child, have demonstrated an extreme disinterest or lack of commitment for assuming parental responsibility for the child;

(2) Whose parent's or parents', as applicable, identity or whereabouts have been unknown to the caretaker for no less than sixty days, and reasonable efforts have been made to identify or locate the parent or parents; or

(3) Whose presumed or alleged non-adjudicated father has failed to assert a claim or interest as a parent for no less than sixty days if he has knowledge of the birth of the child and that he is the presumed or alleged father, and whose mother also falls under paragraph (1) or (2)."

2. By amending the definition of "aggravated circumstances" to read:

""Aggravated circumstances" means that:

(1) The parent has committed, or has aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent;

(2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;

(3) [The parental rights to a sibling have been terminated involuntarily pursuant to chapter 571; or] The parental rights have been judicially terminated or divested regarding a sibling;

(4) The parent has tortured the child;

(5) The child is an abandoned infant; or

[(4)] (6) A court has made a determination regarding a sibling under section 587-73(a) of the presence of the situation described under section 587-73(a)(1) [or] and (2)[, or both].''

SECTION 2. Section 587-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

''(a) Service of summons shall be made personally by delivery of a certified copy thereof to the person or legal entity summoned; provided that if the party to be served resides outside of the State of Hawaii, service shall be made by registered or certified mail addressed to the last known address or if the court is satisfied that it is impracticable to serve personally the summons provided for in the preceding section, the court may order service by registered or certified mail addressed to the last known address, or by publication thereof, or both. Service shall be effected at least twenty-four hours prior to the time fixed in the summons for a temporary foster custody hearing or at least forty-eight hours prior to the time fixed in the summons for any other hearing under this chapter, unless the party otherwise was ordered by the court to appear at the hearing. Personal service of summons required under this chapter shall be made by the sheriff or other authorized person and a return must be made on the summons showing to whom, the date, and time service was made.''

SECTION 3. Section 587-71, Hawaii Revised Statutes, is amended to read as follows:

''§587-71 Disposition hearing. (a) The court may consider the evidence which is relevant to disposition which is in the best interests of the child; provided that the court shall determine initially whether the child's family home is a safe family home. The court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, in rendering such a determination.

(b) If the court determines that the child's family is presently willing and able to provide the child with a safe family home without the assistance of a service plan, the court shall terminate jurisdiction.

(c) If the court determines that the child's family home is a safe family home with the assistance of a service plan, the court shall place the child and the child's family members who are parties under the family supervision of an authorized agency, return the child to the child's family home, and enter further orders, including[,] but not limited to[,] restrictions upon the rights and duties of the authorized agency, as the court deems to be in the best interests of the child.

(d) If the court determines that the child's family home is not a safe family home, even with the assistance of a service plan, the court shall vest foster custody of the child in an authorized agency and enter such further orders as the court deems to be in the best interests of the child.

(e) If the child's family home is determined not to be safe, even with the assistance of a service plan pursuant to subsection (d), the court may, and if the child has been residing without the family home for a period of [eighteen] twelve consecutive months shall, set the case for a show cause hearing as deemed appropriate by the court at which the child's family shall have the burden of presenting evidence to the court regarding such reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon such show cause hearing as the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), and:

(1) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or

(2) Proceed pursuant to this section.

(f) Except as provided in subsection (e)(1), if the court does not terminate the court's jurisdiction, the court shall order in every case that the authorized agency make every reasonable effort, pursuant to section 587-40, to prepare a written service plan, as set forth in section 587-26.

(g) The court may continue the disposition hearing concerning the terms and conditions of the proposed service plan to a date within forty-five days from the date of the original disposition hearing, unless the court deems a later date to be in the best interests of the child; provided that if the court is convinced that a party has signed and fully understands and accepts the service plan, the court may order that the service plan shall constitute the service plan by court order concerning such party and that the service plan be entered into evidence with such party's presence being waived for good cause shown at the continued disposition hearing.

(h) Prior to ordering a service plan at the disposition or continued disposition hearing, the court shall make a finding that each term, condition, and consequence of the service plan has been thoroughly explained to and is understood by each party or a party's guardian ad litem; provided that the court need not [order a service plan and may proceed pursuant to[1] 587-72(c)(7)] enter the findings if the court finds that aggravated circumstances are present.

(i) After a hearing that the court deems to be appropriate, the court may order terms, conditions, and consequences to constitute a service plan as the court deems to be in the best interests of the child; provided that a copy of the service plan shall be incorporated as part of the order. The court need not order a service plan [and may proceed pursuant to[1] 587-72(c)(7)] if the court finds that aggravated circumstances are present.

(j) If the court makes a determination that aggravated circumstances are present under this section, the court shall set the case for a show cause hearing as deemed appropriate by the court within thirty days. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing.

[(j)] (k) The court may order that any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and are deemed to be in the best interests of the child.

[(k)] (l) At any stage of the child protective proceedings, the court may order that a child be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment by any of them of a child as is deemed to be in the best interests of the child. For either the examination or treatment, the court may place the child in a hospital or other suitable facility.

[(l)] (m) The court shall order reasonable supervised or unsupervised visitation rights to the child's family and to any person interested in the welfare of the child and that the visitation shall be in the discretion of an authorized agency and the child's guardian ad litem, unless it is shown that rights of visitation may be detrimental to the best interests of the child; provided that the court need not order any visitation if the court finds that aggravated circumstances are present.

[(m)] (n) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:

(1) Make a finding that each party understands that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

(2) Set the case for a review hearing within six months.

(o) Nothing in this section shall prevent the court from setting a show cause hearing or a permanent plan hearing at any time the court determines such a hearing to be appropriate."

SECTION 4. Section 587-72, Hawaii Revised Statutes, is amended as follows:

"**§587-72 Review hearings.** (a) Except for good cause shown, the court shall set each case for review hearing not later than six months after the date that a service plan is ordered by the court and, thereafter, the court shall set subsequent review hearings at intervals of no longer than six months until the court's jurisdiction has been terminated or the court has ordered a permanent plan and has set the case for a permanent plan review hearing; the court may set a case for a review hearing upon the motion of a party at any time if the hearing is deemed by the court to be in the best interests of the child.

(b) Notice of review hearings shall be served upon the parties and upon the present foster parent or parents, each of whom shall be entitled to participate in the proceedings as a party. Notice of the review hearing shall be served by the department upon the present foster parent or parents no less than forty-eight hours before the scheduled hearing. No hearing shall be held until the foster parent or parents are served. For purposes of this subsection, notice to foster parents may be effected by hand delivery or by regular mail; and may consist of the last court order, if it includes the date and time of the hearing.

(c) Upon each review hearing the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including but not limited to[,] the report submitted pursuant to section 587-40, and:

(1) Determine whether the child's family is presently willing and able to provide the child with a safe family home without the assistance of a service plan and, if so, the court shall terminate jurisdiction;

(2) Determine whether the child's family is presently willing and able to provide the child with a safe family home with the assistance of a service plan and, if so, the court shall return the child or continue the placement of the child in the child's family home under the family supervision of the appropriate authorized agency;

(3) If the child's family home is determined, pursuant to subsection (c)(2) not to be safe, even with the assistance of a service plan, order that the child remain or be placed under the foster custody of the appropriate authorized agency; [if the child has been residing without the family home for a period of twelve months or if there has been a court ordered service plan for a period of one year, the court may set the case for a show cause hearing at which the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon a show cause hearing that the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), or section 587-73(e), and:
   (A) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or
   (B) Proceed pursuant to this section;]

(4) Determine whether the parties have complied with, performed, and completed every term and condition of the service plan that was previously court ordered;

(5) Order revisions to the existing service plan, after satisfying section 587-71(h), as the court, upon a hearing that the court deems to be appropriate, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;

(6) Enter further orders as the court deems to be in the best interests of the child; [and]

(7) Determine whether aggravated circumstances are present and, if so, the court shall set the case for a show cause hearing [at which] as the court deems appropriate within thirty days. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing[.]; and

(8) If the child has been residing outside the family home for twelve consecutive months, set the case for a show cause hearing as deemed appropriate by the court. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing.

(d) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:

(1) Make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

(2) Set the case for a review hearing within six months.

(e) If the child has been residing outside of the family home for an aggregate of fifteen out of the most recent twenty-two months, the department shall file a motion to set the matter for a permanent plan hearing unless:

(1) The department has documented in the safe family home guidelines prepared pursuant to section 587-25(a), a compelling reason why it would not be in the best interests of the child to file a motion; or

(2) The State has not provided to the family of the child, consistent with the time period in the service plan, such services as the department deems necessary for the safe return of the child to the family home;

provided that nothing in this section shall prevent the department from filing such a motion to set a permanent plan hearing if the department has determined that the criteria in section 587-73(a) are present."

SECTION 5. Section 587-73, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including[,] but not limited to[,] the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that:

(1) The child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan;

(2) It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child

with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed [three] two years from the date upon which the child was first placed under foster custody by the court;

(3) The proposed permanent plan will assist in achieving the goal which is in the best interests of the child; provided that the court shall presume that:
   (A) It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes; and
   (B) The presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court; and

(4) If the child has reached the age of fourteen, the child is supportive of the permanent plan."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

Note

1. Prior to amendment "section" appeared here.

ACT 154 H.B. NO. 1124

A Bill for an Act Relating to the State Advisory Council on Rehabilitation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 348-8, Hawaii Revised Statutes, is amended to read as follows:

"§348-8 State [advisory] rehabilitation council [on rehabilitation]. (a) There is established within the department [of human services] a state [advisory] rehabilitation council [on rehabilitation]. The council shall consist of [nineteen] twenty-one members appointed by the governor as provided in section 26-34 and without regard to section 78-4. The members shall include:

(1) At least one representative of the statewide council on independent living;
(2) At least one representative of a parent training and information center;
(3) At least one representative of the client assistance program;
(4) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member if employed by the vocational rehabilitation division of the department;
(5) At least one representative of community rehabilitation program service providers;
(6) [At least four] Four representatives of business, industry, and labor;
(7) Representatives of disability advocacy groups representing a cross section of individuals with physical, cognitive, sensory, and mental disabilities, and parents, family members, guardians, advocates, or

authorized representatives of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves;

(8) Current or former applicants for or recipients of vocational rehabilitation services; [and

(9) The director of human services, who shall be an ex officio member;]

(9) At least one representative of the state educational agency responsible for the public education of students with disabilities;

(10) At least one representative of the state workforce development council; and

(11) The administrator of the vocational rehabilitation division of the department, who shall be an ex officio, non-voting member;

provided that the council shall include at least one member from each county; and provided further that a majority of the council members shall be persons who have disabilities and are not employed by the [department.] vocational rehabilitation division of the department. The council members shall elect a chairperson from the membership. Each member of the council shall serve a three-year term but may not serve more than two consecutive full terms. Any vacancy occurring in the council membership shall be filled in the same manner as the original appointment, except that the governor may delegate the authority to fill such a vacancy to the remaining members of the council after making the original appointment.

(b) The council members shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties.

(c) The council [shall], after consulting with the state workforce development council, shall advise the vocational rehabilitation division of the department on eligibility, order of selection, extent, scope, and effectiveness of services provided, and performance of [the department in providing services, and review] state agencies that affect or that potentially affect the ability of individuals with disabilities in achieving employment outcomes. The council shall develop, agree to, and review state goals and priorities, advise the vocational rehabilitation division of the department regarding authorized activities, and assist in the preparation of the state plan and amendments to the plan, applications, reports, needs assessment, and evaluations. The council shall conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the performance [of] by the vocational rehabilitation division of the department, vocational rehabilitation services provided by state agencies, and other public and private entities[.], and employment outcomes achieved by eligible individuals receiving services, including the availability of health and other employment benefits in connection with employment outcomes. The council shall prepare and submit an annual report to the governor on the status of vocational rehabilitation programs within the State and make the report available to the public.

(d) The council shall coordinate with other councils within the State including the statewide independent living council, the state planning council on developmental disabilities, the state council on mental health and substance abuse, [and] the advisory panel of individuals with disabilities in education[.], and the state workforce development council. The council shall establish working relationships between the vocational rehabilitation division of the department and [such] other councils and coordinate other functions as deemed appropriate under federal law.

(e) If there is a disagreement between the council and the vocational rehabilitation division of the department, the disagreement shall be resolved by the governor."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 155 H.B. NO. 1198

A Bill for an Act Relating to the Integrated Tax Information Management Systems Acquisition By the Department of Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§231- Integrated tax information management systems special fund.** (a) There is established in the state treasury the integrated tax information management systems special fund into which shall be deposited general excise tax revenues as provided by section 237-31. The director of taxation may retain and deposit the amounts necessary to meet the obligations of the integrated tax information management systems performance-based contract. The amounts transferred by the director of taxation to the integrated tax information management systems special fund for a fiscal year shall be limited to the amounts appropriated by the legislature.

(b) Moneys in the fund shall be expended by the department to pay for the integrated tax information management systems performance-based contracts authorized by Act 273, Session Laws of Hawaii 1996.

(c) The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session, providing an accounting of the receipts of, and expenditures from, the fund.

(d) This section shall be repealed on July 1, 2004."

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

(1) Special summer school and intersession fund under section 302A-1310;
(2) School cafeteria special funds of the department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
(6) Special funds established by section 206E-6;
(7) Housing loan program revenue bond special fund;
(8) Housing project bond special fund;
(9) Aloha Tower fund created by section 206J-17;
(10) Domestic violence prevention special fund under section 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;

(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;
(16) Hawaii health systems corporation special funds;
(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section [201B-11][1] ; [and]
(19) Department of commerce and consumer affairs' special funds; and
(20) Integrated tax information management systems special fund under section 231- ;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:
(1) Transportation use special fund established by section 261D-1;
(2) Special summer school and intersession fund under section 302A-1310;
(3) School cafeteria special funds of the department of education;
(4) Special funds of the University of Hawaii;
(5) State educational facilities improvement special fund;
(6) Special funds established by section 206E-6;
(7) Aloha Tower fund created by section 206J-17;
(8) Domestic violence prevention special fund under section 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;
(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital special fund established under section 206X-10.5 and the convention center operations special fund established under section 206X-10.6;
(15) Hawaii health systems corporation special funds; [and]
(16) Tourism special fund established under section [201B-11][1]; and
(17) Integrated tax information management systems special fund;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

"**§237-31 Remittances.** All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit to the office of the department of taxation to which the return

was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that [the]:

(1) The sum from all general excise tax revenues realized by the State that represents the difference between $90,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund; [provided further that a]

(2) A sum, not to exceed $5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund[.]; and

(3) A sum, not to exceed the amount necessary to meet the obligations of the integrated tax information management systems performance-based contract may be retained and deposited in the state treasury to the credit of the integrated tax information management systems special fund. The sum retained by the director of taxation for deposit to the integrated tax information managements systems special fund for each fiscal year shall be limited to amounts appropriated by the legislature. This paragraph shall be repealed on July 1, 2004.''

SECTION 5. There is appropriated out of the integrated tax information management systems special fund the sum of $17,750,828, or so much thereof as may be necessary, for fiscal year 1999-2000, and the sum of $7,480,428, or so much thereof as may be necessary, for fiscal year 2000-2001, to carry out the purposes of this Act. The sums appropriated shall be expended by the department of taxation.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 7. This Act shall take effect on July 1, 1999; provided that:

(1) The amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act shall not be repealed when those sections are reenacted on July 1, 2000, pursuant to section 13 of Act 216, Session Laws of Hawaii 1997; and

(2) The amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 28, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 156

H.B. NO. 1450

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. This Act shall be known and may be cited as the Judiciary Appropriations Act of 1999.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

(b) "Means of Financing," or "MOF," means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

A General funds
B Special funds
C General obligation bond funds
N Other federal funds
W Revolving funds

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 1999, and ending June 30, 2001. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	MOF	APPROPRIATIONS FISCAL YEAR 2000-01	MOF
The Judicial System							
1.	JUD101	COURTS OF APPEAL					
				76.00*		76.00*	
		OPERATING	JUD	4,633,053	A	4,633,053	A
			JUD	75,000	W	75,000	W
2.	JUD111	CIRCUIT COURTS					
				489.50*		493.50*	
		OPERATING	JUD	26,077,341	A	26,041,957	A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS FISCAL YEAR 1999-00	M O F	APPROPRIATIONS FISCAL YEAR 2000-01	M O F
			JUD	212,602	N		N
3.	JUD112	FAMILY COURTS		412.00*		416.00*	
		OPERATING	JUD	26,537,136	A	26,683,470	A
			JUD	386,575	B	386,575	B
4.	JUD121	DISTRICT COURTS		495.50*		495.50*	
		OPERATING	JUD	17,911,155	A	17,878,430	A
				35.00*		35.00*	
			JUD	1,643,033	B	1,617,033	B
5.	JUD201	ADMIN. DIRECTOR SERVICES		236.00*		236.00*	
		OPERATING	JUD	15,690,914	A	15,438,872	A
			JUD	2,080,102	B	2,188,937	B
		INVESTMENT CAPITAL	JUD	2,970,000	C	30,900,000	C

PART III. PROGRAM PROVISIONS

SECTION 4. Provided that whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for operating purposes; provided that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die.

SECTION 5. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property under any act of Congress, or any funds or other property from private organizations or individuals which are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice, or the agency with the chief justice's approval, shall have the power to enter into the undertaking with the federal government, private organization, or individual; and provided further that while most federal aid allocations are known and state matching funds are provided in this Act, in instances where programs for which federal-state cost sharing is not yet determined, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible.

SECTION 6. Provided that of the general fund appropriation for circuit courts (JUD 111), $50,000 shall be expended to establish and implement the alternatives to incarceration pilot program.

SECTION 7. Provided that of the general fund appropriation for circuit courts (JUD 111), $70,867 shall be expended to continue phase II of the third circuit court video conferencing project.

SECTION 8. Provided that of the general fund appropriation for family court (JUD 112), $60,000 shall be expended to provide prostitution intervention services for juveniles within the jurisdiction of the family court.

PART IV. CAPITAL IMPROVEMENTS PROGRAM PROJECTS

SECTION 9. The sum of $33,870,000 appropriated or authorized in part II of this Act for capital improvements program projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
The Judicial System							
JUD201 - ADMIN. DIRECTOR SERVICES							
1.		FAMILY COURT AND JUVENILE DETENTION CENTER, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE FAMILY COURT AND JUVENILE DETENTION CENTER AT KAPOLEI, OAHU.					
		PLANS		1			
		LAND		1			
		DESIGN		198			
		TOTAL FUNDING	JUD	200C			C
2.		KAUAI JUDICIARY COMPLEX, KAUAI					
		DESIGN AND CONSTRUCTION FOR A NEW JUDICIARY COMPLEX IN LIHUE, KAUAI.					
		DESIGN		40			
		CONSTRUCTION		755		30,000	
		TOTAL FUNDING	JUD	795C		30,000C	
3.		HOAPILI HALE UPGRADE IMPROVEMENTS, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR UPGRADE IMPROVEMENTS AT HOAPILI HALE IN WAILUKU, MAUI.					
		DESIGN		10			
		CONSTRUCTION		180			
		EQUIPMENT		10			
		TOTAL FUNDING	JUD	200C			C
4.		BACK-UP POWER FOR JUDICIARY COMPUTER CENTER, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR EMERGENCY ELECTRICAL POWER SYSTEMS FOR THE JUDICIARY COMPUTER CENTER AT KAUIKEAOULI, OAHU.					
		PLANS		5			
		DESIGN		45		15	
		CONSTRUCTION				420	
		EQUIPMENT				15	
		TOTAL FUNDING	JUD	50C		450C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00	M O F	FISCAL YEAR 2000-01	M O F
5.		HILO STATE OFFICE BUILDING DISTRICT COURT INTERIOR ALTERNATIONS, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR ALTERATIONS TO DISTRICT COURT OFFICES AT HILO, HAWAII.					
		PLANS		5			
		DESIGN		15			
		CONSTRUCTION		75			
		EQUIPMENT		5			
		TOTAL FUNDING	JUD	100C			C
6.		ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.					
		PLANS		1			1
		DESIGN		1			1
		CONSTRUCTION		897			447
		EQUIPMENT		1			1
		TOTAL FUNDING	JUD	900C			450C
7.		REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE.					
		PLANS		5			
		DESIGN		70			
		CONSTRUCTION		415			
		EQUIPMENT		10			
		TOTAL FUNDING	JUD	500C			C
8.		HOOKELE COURT NAVIGATIONAL PROJECT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR COURT CONCIERGE AND CUSTOMER SERVICE CENTERS WITHIN JUDICIARY BUILDINGS, OAHU.					
		PLANS		5			
		DESIGN		20			
		CONSTRUCTION		200			
		TOTAL FUNDING	JUD	225C			C

PART V. ISSUANCE OF BONDS

SECTION 10. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in part II and listed in part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed $33,870,000.

PART VI. SPECIAL PROVISIONS

SECTION 11. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvements program projects autho-

rized in part II and listed in part IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations made for fiscal year 1999-2000 and fiscal year 2000-2001 which are unencumbered as of June 30, 2002, shall lapse as of that date.

SECTION 12. The judiciary is authorized to delegate to other state or county agencies the planning, land acquisition, design, construction, and equipment of any capital improvements project when it is determined by the judiciary to be advantageous to do so.

SECTION 13. All unrequired balances in the general obligation bond fund, after the objectives of part II appropriations for capital improvements program purposes listed as projects in part IV have been met, shall be transferred to the judiciary project adjustment fund; provided that the judiciary shall submit a report of the legislature no later than thirty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 14. If the amount allocated from the general obligation bond fund for a capital improvements program project listed in part IV of this Act is insufficient, the chief justice may make supplemental allotments from the project adjustment fund; provided further that such supplemental allotments from the project adjustments fund shall not be used to increase the scope of the project; and provided further that the chief justice shall submit a report to the legislature no later than twenty days prior to the convening of the 2000 and 2001 regular sessions.

SECTION 15. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in part IV, the chief justice may authorize such reduction of project scope.

SECTION 16. The chief justice shall determine when and the manner in which the authorized capital improvements program projects shall be initiated. The chief justice shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for those amounts through the issuance of bonds authorized in part VI of this Act.

SECTION 17. Any law or any provision to the contrary notwithstanding, the chief justice may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future act which have not lapsed, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

PART VII. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 18. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 19. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 20. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 157 S.B. NO. 5

A Bill for an Act Relating to Agricultural Loans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in the past, state government has not encouraged the exportation of goods to infuse capital into our local economy. Consequently, the export potential of markets such as the agricultural industry remains relatively untested and undefined. The legislature also finds that countries, like Japan, lack agricultural resources to feed their population and depend on other nations, like Tonga, for their food supply. A more productive agricultural loan program would encourage farmers to export crops and livestock to compete in the world marketplace and help Hawaii's farmers to be more economically viable and productive.

The purpose of this Act is to:

(1) Provide agricultural loans to qualified farmers to export crops and livestock; and

(2) Appropriate funds from the agricultural loan revolving fund to farmers in economically depressed areas.

SECTION 2. Section 155-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

"(d) Class C: Farm operating loans shall be for the purpose of carrying on and improving a farming operation, including:

(1) The purchase of farm equipment and livestock;

(2) The payment of production and marketing expenses including materials, labor, and services;

(3) The payment of living expenses; [and]

(4) The liquidation of indebtedness incurred for any of the foregoing purposes[.]; and

(5) The exportation of crops and livestock.

The loans shall be for an amount not to exceed $400,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations."

2. By amending subsection (f) to read:

"(f) Class E: Loans to cooperatives and corporations shall provide credit to farmers' cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:

(1) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed $500,000 and a term not to exceed twenty years; [and]

(2) Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed $300,000 and a term not to exceed seven years[.]; and

(3) The exportation of crops and livestock.

To be eligible, a cooperative or corporation shall have a majority of its board of directors and a majority of its membership as shareholders who meet the eligibility requirements of section 155-10 and who devote most of their time to farming operations, and the facility loans shall be for an amount not to exceed $500,000 or eighty per cent of the cost of the project, whichever is the lesser."

SECTION 3. There is appropriated out of the agricultural loan revolving fund of the State of Hawaii the sum of $2,500,000 or so much thereof as may be necessary for fiscal year 1999-2000 for loans to farmers in economically depressed areas; provided that:

(1) Any principal collected shall be deposited into the agricultural loan revolving fund and interest collected shall be deposited into the agricultural loan reserve fund;

(2) Loans under this Act shall be subject to the provisions of Act 118, Session Laws of Hawaii 1998; and

(3) The department of agriculture, in its annual report, shall report on loans made from the agricultural loan revolving fund to qualified farmers in economically depressed areas.

SECTION 4. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 158 S.B. NO. 392

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The cruise ship industry has experienced large growth rates both in Hawaii and around the world. While for many years the airplane has been the preferred mode of travel, passenger cruising has become more popular. There are several reasons for this:

(1) Cruising is a better value than traditional air-land vacation package when all costs are considered;

(2) According to the cruise industry, the maturing "baby boomers" are ready to travel, as they have both the money and time to go ocean cruising; and

(3) Because airlines have cut travel agent commissions, while cruise lines still give travel agents full commission, travel agents encourage cruises more than airline travel.

As a result, there is a current worldwide demand in cruise travel. To meet this boom, cruise lines are building cruise ships in record numbers. Besides becoming more numerous, the new ships are much larger than the older ships.

The purpose of this Act is to appropriate moneys toward, and to express strong legislative and community support for, additional cruise ship berths in Honolulu harbor. The Oahu commercial harbors 2020 master plan recommends that, to increase Hawaii's share of the global cruise tour market, Honolulu harbor must provide more cruise ship berths.

SECTION 2. There is appropriated out of the harbor special fund the sum of $2,000,000 or so much thereof as may be necessary for fiscal year 1999-2000 for the planning and design of a cruise ship passenger terminal at pier 2, Honolulu harbor.

SECTION 3. The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 159 S.B. NO. 528

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A be appropriately designated and to read as follows:

"**§431:10A- Federally funded programs; exemption.** Requirements relating to mandated coverages shall not be applicable to any insurer offering health insurance under a federally funded program under the Social Security Act, as amended; provided that this exemption shall apply only to that part of the insurer's business under the federally funded program."

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

"**§432:1- Federally funded programs; exemption.** Requirements relating to mandated coverages shall not be applicable to any mutual benefit society offering health insurance under a federally funded program under the Social Security Act, as amended; provided that this exemption shall apply only to that part of the mutual benefit society's business under the federally funded program."

SECTION 3. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§432D- Federally funded programs; exemption.** Requirements relating to mandated coverages shall not be applicable to any health maintenance organization offering health insurance under a federally funded program under the Social Security Act, as amended; provided that this exemption shall apply only to that part of the health maintenance organization's business under the federally funded program."

SECTION 4. New statutory material is underscored.[1]

SECTION 5. This Act, upon its approval, shall take effect on July 1, 1999.

(Approved June 28, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 160

S.B. NO. 646

A Bill for an Act Relating to Government.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 92-21, Hawaii Revised Statutes, is amended to read as follows:

"**§92-21 Copies of records; other costs and fees.** Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy. The cost of reproducing any government record, except geographic information system digital data, shall not be less than [50] 5 cents per page, sheet, or fraction thereof. The cost of reproducing geographic information system digital data shall be in accordance with rules adopted by the agency having charge or control of that data. Such reproduction cost shall include, but shall not be limited to, labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All fees shall be paid in by the public officer receiving or collecting the same to the state director of finance, the county director of finance, or to the agency or department by which the officer is employed, as government realizations; provided that fees collected by the public utilities commission pursuant to this section shall be deposited in the public utilities commission special fund established under section 269-33."

PART II

SECTION 2. The purpose of this part is to authorize the Barbers Point naval air station redevelopment commission to arrange for or provide infrastructure services, including utilities, roadway maintenance and repair, security, and other services, that may be required by the owners of properties being conveyed by the United States Navy under the base realignment and closure action and to recoup the costs for these services, including maintenance and administrative costs, from the owners of the properties, make changes to the composition of the members of the commission to reflect the recent reorganization of the city and county of Honolulu administration; and authorize the commission to establish advisory committees as it deems appropriate.

SECTION 3. Section 206G-3, Hawaii Revised Statutes, is amended to read as follows:

"[[]§206G-3[]] **Barbers Point Naval Air Station redevelopment commission; established.** (a) There is established within the department of business, economic development, and tourism, for administrative purposes, the Barbers Point Naval Air Station redevelopment commission, which shall be a body corporate and a public instrumentality of the State for the purpose of implementing this chapter.

(b) The purpose of the commission shall be to act as the local redevelopment authority to facilitate the redevelopment of Barbers Point Naval Air Station in accordance with the Barbers Point Naval Air Station community reuse plan. The commission's duties shall include but not be limited to:

(1) Coordinating with the Navy and other entities during the preparation of an environmental impact statement and conduct of remediation activities for the Barbers Point Naval Air Station community reuse plan;
(2) Assisting the landholders designated by the plan in the marketing of their properties and the preparation and processing of conveyance requests;
(3) Assisting the Navy by providing "caretaker services" after the closure of Barbers Point Naval Air Station as necessary;
(4) Working with the Navy and others to ensure that infrastructure support is provided to the existing developed area, which is referred to as the "downtown area" and other federally retained areas;
(5) Developing the infrastructure necessary to support the implementation of the Barbers Point Naval Air Station community reuse plan; and
(6) Providing, to the extent feasible, maximum opportunity for the reuse of surplus property by private enterprise or state and local government.

(c) The commission shall consist of fifteen voting members as follows:

(1) The state director of business, economic development, and tourism; the chairperson of the board of land and natural resources; the adjutant general; the chairperson of the Hawaiian homes commission; and the director of transportation, or their designated representatives, shall serve as ex-officio voting members;
(2) [The county chief planning officer; the director and chief engineer of public works; the director of housing and community development; and the director of transportation services,] Four county department directors appointed by the mayor or their designated representatives, shall serve as [ex-officio] voting members;
(3) Six voting members shall be appointed for staggered terms as follows:
    (A) The governor shall appoint one member from a list of three nominees submitted by the chair of the Makakilo/Kapolei/Honokai Hale neighborhood board;
    (B) The governor shall appoint one member from a list of three nominees submitted by the chair of the Ewa neighborhood board;
    (C) The governor shall appoint, subject to the advice and consent of the senate, two members from the general public;
    (D) The mayor of Honolulu shall select one member from the general public; and
    (E) The Honolulu city council shall select one member from the general public.

(d) The commission shall select a chairperson and such other officers as it may deem necessary from among its members.

(e) The commander, naval base Pearl Harbor and commanding officer, naval air station Barbers Point may serve as non-voting ex-officio members of the commission.

(f) A majority of all voting members shall constitute a quorum to do business, and the concurrence of a majority of all voting members shall be necessary

to make any action of the commission valid. All members shall continue in office until their respective successors, selected in the same manner and representing the same community of interest, have been appointed and qualified.

(g) The commission shall hire an executive director for the commission. The Hawaii community development authority shall [make available employees of the authority to staff] assist the commission as the commission deems necessary.

(h) Members appointed under subsection (c) shall serve without compensation, but each shall be reimbursed for expenses including travel expenses incurred in the performance of their duties.

(i) The commission may establish advisory committees as it deems necessary."

SECTION 4. Section 206G-4, Hawaii Revised Statutes, is amended to read as follows:

"[]§206G-4[] **Powers; generally.** In its role as the local redevelopment authority for the redevelopment of the Kalaeloa community development district, and except as otherwise limited by this chapter, the commission may:

(1) Sue and be sued;
(2) Have a seal and alter the same at pleasure;
(3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
(4) Make and alter bylaws for its organization and internal management;
(5) Make rules with respect to its projects, operations, properties, and facilities, in conformance with chapter 91;
(6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
(7) Acquire, reacquire, or contract to acquire or reacquire by grant, lease, or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;
(8) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, utility systems, and other public improvements;
(9) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project which the commission has theretofore sold or otherwise conveyed, transferred, or disposed of;
(10) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;

(11) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on such terms and conditions as it deems advisable;

(12) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;

(13) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(14) Contract for and accept gifts [or], grants, utility systems, roadway systems, or other improvements in any form from any public agency or from any other source; [and]

(15) Arrange for or provide interim services, including but not limited to utilities, roadway maintenance and repair, security, and other services to the owners of properties being conveyed by the Navy under the base realignment and closure action; and recoup the costs for these services including maintenance and administrative costs from the owners of the properties in proportion to their use of the services or benefits therefrom; and

[(15)] (16) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter."

PART III

SECTION 5. Chapter 109, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§109- Kapolei recreational sports complex special fund.** There is created a special fund to be known as the Kapolei recreational sports complex special fund into which funds appropriated by the legislature, received pursuant to a management contract under section 109-2(3), or collected by the authority from the operations of the Kapolei recreational sports complex shall be deposited subject to contracts entered into pursuant to section 109-2(3); provided that all funds received pursuant to this section shall be kept completely separate from the stadium special fund. Moneys may not be transferred between the Kapolei recreational sports complex special fund and the stadium special fund. The Kapolei recreation and sports complex special fund shall be applied, used, and disposed of for the payment of:

(1) The expenses of the operation, maintenance, promotion, and management of; and

(2) All or a portion of the cost of financing any capital improvement project for;

the Kapolei recreational sports complex; provided that all services required for the Kapolei recreational sports complex shall be performed by persons hired on contract or otherwise, without regard for chapters 76 and 77; provided further that the authority shall report annually to the legislature all receipts and expenditures of the Kapolei recreational complex special fund account no later than twenty days prior to the convening of each regular session."

SECTION 6. Chapter 109, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"STADIUMS AND RECREATIONAL FACILITIES"

SECTION 7. Section 109-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be within the department of accounting and general services for administrative purposes only, a stadium authority whose responsibility shall be to maintain, operate, and manage the stadium and facilities attached thereto[.] and to provide for the maintenance, operation, management, and promotion of the Kapolei recreational sports complex. The authority shall consist of nine members who shall be appointed by the governor in the manner prescribed by section 26-34. Each member of the authority shall have been a citizen of the United States and a resident of the State for at least five years next preceding the member's appointment. The president of the University of Hawaii and the superintendent of education shall be ex officio members of the authority but shall not vote."

SECTION 8. Section 109-2, Hawaii Revised Statutes, is amended to read as follows:

"**§109-2 Stadium authority; powers and duties.** The powers and duties of the stadium authority shall be as follows:

(1) To maintain, operate, and manage the stadium and related facilities[;], and to provide for the maintenance, operation, management, and promotion of the Kapolei recreational sports complex;

(2) To prescribe and collect rents, fees, and charges for the use or enjoyment of the stadium or any of its facilities;

(3) To make and execute contracts and other instruments necessary or convenient to exercise its powers under this chapter and subject to any limitations in this chapter, to exercise all powers necessary, incidental, or convenient to carry out and effectuate the purposes and provisions of this chapter[;], including entering into contracts under chapter 102 or 103D for the management of the Kapolei recreational sports complex, to include but not be limited to the operation, maintenance, and promotion of the complex in a manner that is beneficial to both the State and the contractor. These contracts may contain revenue sharing incentives based on increased usage of the complex;

(4) To adopt, amend, and repeal in accordance with chapter 91 rules it may deem necessary to effectuate this chapter and in connection with its projects, operations, and facilities;

(5) To appoint a manager and a deputy manager who shall have such qualifications as the authority deems necessary and who shall hold their respective offices at the pleasure of the authority. The manager and deputy manager shall be exempt from the requirements of chapters 76, 77, and 89. Effective January 1, 1989, and January 1, 1990, the salary of the manager shall be set by the governor within the range from $69,748 to $74,608 and $72,886 to $77,966 a year, respectively. Effective January 1, 1989, and January 1, 1990, the salary of the deputy manager shall be $62,854 and $65,683 a year, respectively. The manager shall have full power to administer the affairs of the stadium and related facilities, and to provide for a management contract for the Kapolei recreational sports complex, subject to the direction and approval of the authority. The manager shall, subject to the approval of the authority, have power to appoint, suspend, and discharge a secretary who shall be exempt from the requirements of chapters 76, 77, and 89, and such other employees, subordinates, and assistants as may be

necessary for the proper conduct of the business of the authority. Except for persons hired on contract or otherwise as provided in section 109-3 and except for the manager, deputy manager, and secretary, all appointments, suspensions, or discharges shall be made in conformity with the applicable provisions of chapters 76 and 77; and

(6) To plan, promote, and market the stadium [and] , its related facilities[.], and the Kapolei recreational sports complex."

SECTION 9. Section 109-3, Hawaii Revised Statutes, is amended to read as follows:

"**§109-3 Stadium special fund.** There is created a special fund to be known as the stadium special fund into which funds collected by the authority shall be deposited[.]; provided that all funds received pursuant to this section shall be kept completely separate from the Kapolei recreational sports complex special fund. Moneys may not be transferred between the stadium special fund and the Kapolei recreational sports complex special fund. The stadium special fund shall be applied, used and disposed of for the payment of:

(1) The expenses of the operation, maintenance, promotion, and management of; and

(2) All or a portion of the cost of financing any capital improvement project for;

the stadium and related facilities; provided that all services required for the stadium and related facilities shall be performed by persons hired on contract or otherwise, without regard for chapters 76 and 77; provided further that the authority shall report to the legislature all receipts and expenditures of the stadium special fund account twenty days prior to the convening of each regular session."

SECTION 10. Section 109-5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§109-5[]] Security personnel, powers.** The person employed as the chief security officer by the authority shall have all of the powers of police officers, including the power of arrest; provided that such powers shall remain in force and in effect only while the person is in the actual performance of the person's duties at the stadium[.] or the Kapolei recreational sports complex."

SECTION 11. Section 109-7, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Any person violating any rule of the stadium authority regulating conduct on the stadium or Kapolei recreational sports complex premises shall be guilty of a petty misdemeanor punishable by a fine not exceeding $1,000, or imprisonment not exceeding thirty days, or both.

(c) Any person violating any rule of the stadium authority regulating parking or traffic on the stadium or Kapolei recreational sports complex premises shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein."

PART IV

SECTION 12. Findings and purpose. (a) The legislature finds that the federal government has empowered federal agencies that award grants or that enter into intergovernmental agreements with state agencies to provide incentives, such as

decreased state matching funds, waived regulations, or additional federal funds, in exchange for measuring progress towards shared goals.

(b) The purpose of this part is to establish a Hawaii performance partnerships board on a special and temporary basis within the office of the governor for administrative purposes.

SECTION 13. Hawaii performance partnerships board; establishment. (a) There is established within the office of the governor, on a special and temporary basis, the Hawaii performance partnerships board.

(b) The board shall consist of the following nine members who shall be appointed by the governor in accordance with section 26-34, Hawaii Revised Statutes:

(1) Three members representing business;
(2) Three members representing philanthropy; and
(3) Three members representing government.

(c) Members shall serve for five-year terms, except for appointed state officials, who shall serve for the length of their appointments.

(d) The members of the board shall serve without compensation and without reimbursement for expenses, including travel expenses.

(e) The governor shall designate a chairperson from among the members of the board.

SECTION 14. Duties of the board. The board shall:

(1) Propose key community outcomes of well-being for the residents of the State to the legislature, and report to the legislature and the citizens of Hawaii on progress in attaining the outcomes adopted by the legislature;
(2) Execute an agreement between the federal government, the state executive branch, and representatives of philanthropy and community service organizations to encourage intergovernmental partnerships with federal agencies and state, county, and community organizations for the purpose of measuring results in exchange for fiscal and regulatory flexibility in achieved shared goals;
(3) Increase the use of performance measurement initiatives in each state agency through the governor's cabinet; and
(4) Increase the number of performance partnerships between federal, state, county, and community-based agencies through the governor's cabinet.

SECTION 15. Annual report. The board shall prepare an annual report on progress towards key community outcomes adopted by the legislature, which shall be transmitted to the governor, the legislature, and the public.

PART V

SECTION 16. Section 171-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created in the department a special fund to be designated as the "special land and development fund". Subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, and except as provided under section 171-138 for the industrial park special fund, all proceeds of sale of public lands, including interest on deferred payments; all rents from leases, licenses, and permits derived from public lands; <u>all fees, fines, and other administrative charges collected under this chapter;</u> a portion of the highway fuel tax collected

under chapter 243; fees charged by the department for the commercial use of public trails and trail accesses under the jurisdiction of the department; and private contributions for the management, maintenance, and development of trails and accesses shall be set apart in the fund and shall be used only as authorized by the legislature for the following purposes:

(1) To reimburse the general fund of the State for advances made that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;

(2) For the planning, development, management, operations, or maintenance of all lands and improvements under the control and management of the board, [including repairs or improvements thereon; provided that the department shall not expend in excess of $500,000 in any fiscal year without the prior approval of the governor;] including but not limited to permanent or temporary staff positions who may be appointed without regard to chapter 76 and 77;

(3) To repurchase any land, including improvements, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;

(4) For the payment of all appraisal fees; provided that all fees reimbursed to the board shall be deposited in the fund;

(5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;

(6) For the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department not to exceed $500,000 in any fiscal year; [and]

(7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60[.]; and

(8) For other purposes of this chapter."

SECTION 17. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the industrial park special fund as of the close of business on June 30, 1999, to the credit of the special land and development fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

PART VI

SECTION 18. The purpose of this part is to provide additional security for lenders on land or interests covered by a lease, patent, license, agreement, or other instrument and provides flexibility to the department of land and natural resources to assign or transfer leases based on current industry standards.

SECTION 19. Chapter 166, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§166- Rights of holders of security interests.** (a) For the purpose of this section:

"Institutional lender" means a federal, state, or private lending institution licensed to do business in the State of Hawaii in making loans to qualified applicants under section 166-7 on the basis of a lease for security, in whole or in part, together with any other entity who acquires all or substantially all of an institutional lender's loan portfolio.

"Making a loan" means lending of new money after the effective date of this Act or the renewal or extension of indebtedness owing by a qualified applicant to an institutional lender.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land.

(b) Board action shall be required when an institutional lender acquires the lessee's interest through a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(c) Notwithstanding any provisions of this chapter or any law to the contrary, if any lease is subject to a security interest held by an institutional lender, and provided the institutional lender has given to the board a copy of such encumbrance as recorded in the bureau of conveyances:

(1) If the lease is cancelled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, than in either event, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately prior to the cancellation, termination, or rejection, with all terms and conditions being the same as in the cancelled, terminated, or rejected lease, except only for such liens, claims, and encumbrances, if any, which were superior to the institutional lender prior to the cancellation, termination, or rejection. If a lease is rejected or deemed rejected under bankruptcy law, the lease shall be deemed to be cancelled and terminated for all purposes under state law;

(2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of the provisions of paragraph (1) by reason of acquisition of lessee's interest pursuant to a foreclosure sale, judicial or nonjudicial, and by reason of an assignment in lieu of foreclosure, then:

(A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of lessee's interest but shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease;

(B) The provisions of subsections 166-6(a)(1) and (2) shall not apply to the lease or the demised land during such time the institutional lender holds the lease; provided, however, that for non-monetary lease violations, the institutional lender shall first remedy the lease terms which caused the cancellation, termination, or rejection to the satisfaction of the board; provided further that the new lease issued to the institutional lender shall have a sunset date (one hundred twenty days from the effective date of issuance), when the institutional lender shall either sell or assign the lease, after which date the provisions of subsection 166-6(a) shall become applicable to the new lease;

(3) As long as there is a delinquent loan balance secured by a security interest, the lease may not be cancelled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land

demised and subject to the use restrictions imposed by the lease and applicable laws, may be imposed or become payable, and no lands may be withdrawn from the lease, except by eminent domain proceedings beyond the control of the board, except with prior written consent by the institutional lender and such consent shall not be unreasonably withheld; and

(4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by a institutional lender shall have been paid in full.

(d) Ownership of both the lease and the security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge said estates with the consent of the board.

(e) The board may include in any consent form or document such provisions not inconsistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(f) The purchaser, including junior lien holder, of the institutional lender's security interest, and the same is assigned to such purchaser, then the rights herein shall be exercisable by such transferee as successor in interest to the institutional lender, except that such purchase shall conform with subsection (c)(4) and, further, the transfer of such rights shall be reserved unto and exercisable only to an institutional lender. Other purchasers may not be precluded in acquiring the institutional lender's security interest but cannot have exercisable rights as successor in interest to the original institutional lender."

SECTION 20. Section 171,[1] Hawaii Revised Statutes, is amended to read as follows:

"**§171-21 Rights of holder of security interest.** Whenever any notice of breach or default is given to any party under section 171-20, or under the terms of any lease, patent, license, agreement, or other instrument issued or to be issued under this chapter, a copy of the notice shall be delivered by the board of land and natural resources to all holders of record of any security interest in the land or interest covered by the lease, patent, license, agreement, or other instrument whose security interest has been recorded with the board. Should the board seek to forfeit the privilege, interest, or estate created by the lease, license, agreement, patent, or other instrument, each holder may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants, restrictions, or conditions of any lease, patent, license, agreement, or other instrument capable of performance by the holder, as determined by the board, within the time period provided in section 171-20 or within such additional period as the board may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage. Any lease, patent, license, agreement, or other instrument transferred pursuant to this section shall not be subject to the requirements in section 171-14. Upon failure of the holder to exercise its option, the board may:

(1) Pay to the holder from any moneys at its disposal, including the special land and development fund, which is made available for that purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof the board shall be entitled to a conveyance of the interest or estate upon payment to the

holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or

(2) If the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when it may still hope otherwise to resolve the problems created by the breach or default involved.

Section 171-19 to the contrary notwithstanding, the proceeds of any redisposition under paragraph (2) shall be applied: first, to reimburse the board for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the State in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redisposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate. Nothing contained in this section shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date hereof, and to the extent that this section and section 171-98 shall or may conflict and adversely affect such interests, the same shall be of no force and effect."

SECTION 21. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a)[1] to read as follows:

"(a) Except as otherwise provided, the following restrictions shall apply to all leases:

(1) Options for renewal of terms are prohibited;

(2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;

(3) No lease shall be made for any land under a lease which has more than two years to run;

(4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county;

(5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board [if:

(A) It contains the personal residence of the lessee;

(B) In the case of commercial, industrial, hotel, resort, apartment, and other business uses, the lessee was required to put in substantial building improvements;
(C) The lessee becomes mentally or physically disabled;
(D) Extreme economic hardship is demonstrated to the satisfaction of the board;
(E) It is to the corporate successor of the lessee; or
(F) In the case of agricultural uses, the assignee meets the qualifications of a bona fide individual farmer or a nonindividual farm concern pursuant to section 171-14.5, in addition to or notwithstanding the other conditions of this paragraph];

provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;

(6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;

(7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;

(8) Mineral and metallic rights and surface and ground water shall be reserved to the State; and

(9) No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes, unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term "lease", for the purposes of this paragraph, includes month-to-month rental agreements and similar tenancies.

(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

(1) Modify or eliminate any of the restrictions specified in subsection (a);
(2) Extend or modify the fixed rental period of the lease; or

(3) Extend the term of the lease

to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Department of Veterans Affairs, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or any other federal mortgage lending agency qualified to do business in the State, and their respective successors and assignees, or to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates; provided that the private lender shall be qualified to do business in the State; provided further that the approval of any extension shall be subject to the following:

(1) The demised premises have been used substantially for the purpose for which they were originally leased;
(2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
(3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening; and
(4) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

(c) The board at any time during the term of any intensive agricultural, aquaculture, or mariculture lease and when justified by sound economic practices or other circumstances, may permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised. As a condition to permitting alternative uses, the board may require such other modifications, including rental adjustments or changes in the lease as may be necessary to effect or accommodate the alternative use or uses. An alternative use or uses may be allowed by the board upon:

(1) The application of the lessee;
(2) Consent of each holder of record having a security interest in the leasehold; and
(3) A finding by the board that the alternative use or uses are in the public interest.

PART VII

SECTION 22. Section 1-28.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§1-28.5[]] Publication of notice.** (a) [Whenever] Notwithstanding any other statute, law, charter provision, ordinance, or rule to the contrary, whenever a government agency is required to give public notice or to publish notice, the notice shall be given [by advertisement] only as follows:

(1) For statewide publication:
  (A) In a daily or weekly publication of statewide circulation; or
  (B) By publication in separate daily or weekly publications whose combined circulation is statewide[.];
  and
(2) For county-wide publication, by publication in a daily or weekly publication in the affected county.

Additional supplemental notice may also be given through Hawaii FYI, the State's interactive computer system.

(b) For purposes of this section, the comptroller pursuant to chapter 103D shall determine a [consistent] publication [procedure] for all government agencies to enable the public to go to one source of publication for published public notice on each island.

(c) Whenever a public notice is published in a newspaper or other publication described in subsection (a), proof of the publication shall be the affidavit of the printer, publisher, principal clerk, or business manager of the newspaper or other publication or of the designated agent of the group that published the notice.

(d) This section shall not apply to notices required by chapters 103D and 103F.

(e) For purposes of this section, "government agency" means each department, board, commission, or officer of the State or any of its political subdivisions."

PART VIII

SECTION 23. Section 36-21, Hawaii Revised Statutes, is amended to read as follows:

"**§36-21 Short-term investment of state moneys.** The director of finance may invest any moneys of the State which in the director's judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director's judgment the action will not impede or hamper the necessary financial operations of the State in:

(1) Any bonds or interest-bearing notes or obligations:
   (A) Of the State (including state director of finance's warrant notes issued pursuant to chapter 40);
   (B) Of the United States;
   (C) For which the faith and credit of the United States are pledged for the payment of principal and interest;
(2) Federal land bank bonds;
(3) [Joint stock farm loan bonds;] Federal Agricultural Mortgage Corporation notes and bonds;
(4) Federal Home Loan Bank notes and bonds;
(5) Federal Home Loan Mortgage Corporation bonds;
(6) Federal National Mortgage Association notes and bonds;
(7) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof;
(8) Repurchase agreements fully collateralized by any such bonds or securities;
(9) Federally insured savings accounts;
(10) Time certificates of deposit;
(11) Certificates of deposit open account;
(12) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
(13) Student loan resource securities including:
   (A) Student loan auction rate securities;
   (B) Student loan asset-backed notes;
   (C) Student loan program revenue notes and bonds; and
   (D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues;

issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers

maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;

(14) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and

(15) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;

provided that the investments are due to mature not more than five years from the date of investment. Income derived from those investments shall be a realization of the general fund; provided that income earned from moneys invested by the general funds, special funds, bond funds, and trust and agency funds on an investment pool basis shall be paid into and credited to the respective funds based on the contribution of moneys into the investment pool by each fund. As used in this section, "investment pool" means the aggregate of state treasury moneys that are maintained in the custody of the director of finance for investment and reinvestment without regard to fund designation.

Except with respect to an early withdrawal penalty on an investment permitted by this section, the amount of such penalty being mutually agreed at the time of acquisition of such investment, no investment permitted by this section shall require or may in the future require payments by the State, whether unilateral, reciprocal, or otherwise, including margin payments, or shall bear interest at a variable rate which causes or may cause the market price of such investment to fluctuate; provided that such limitation shall not apply to money market mutual funds which:

(1) [invest] Invest solely in:

(A) [direct] Direct and general obligations of the United States of America; or

(B) [obligations] Obligations of any agency or instrumentality of the United States of America the payment of the principal and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America[,][1]

(2) [are] Are rated at the time of purchase "AAAm-G" or its equivalent by Standard & Poor's Ratings Group[,]; and

(3) [are] Are open-end management investment companies regulated under the Investment Company Act of 1940, as amended, which calculate their current price per share pursuant to Rule 2a-7 (17 Code of Federal Regulations section 270.2a-7) promulgated under such act.

Furthermore, the State shall not acquire any investment or enter into any agreement in connection with the acquisition of any investment or related to any existing investment held by the State, which would require or may in the future require any payment by the State, whether unilateral, reciprocal, or otherwise, such as swap agreements, hedge agreements, or other similar agreements. For purposes of this section, a swap or hedge payment is any payment made by the State in consideration or in exchange for a reciprocal payment by any person, such as a variable rate payment in exchange for a fixed rate payment, a fixed rate payment in exchange for a variable rate payment, a payment when a cap or a floor amount is exceeded, or other similar payment."

PART IX

SECTION 24. The legislature finds that an individual development account (IDA) is a special savings account program designed to:

(1) Provide individuals and families, especially those with limited financial means, an opportunity to accumulate assets;

(2) Facilitate and mobilize savings;

(3) Promote post-secondary education, vocational training, home-ownership, and micro-enterprise development;
(4) Stabilize families; and
(5) Build communities.

Members of Hawaii's private sector, nonprofit organizations, and government recognize that IDAs are among the most promising anti-poverty ideas to emerge in the last few decades. In an effort to expand awareness of these accounts, these entities have joined together to form the Hawaii IDA collaborative. Partners in this new initiative include Parents and Children Together, Waimanalo Community Development Corporation, Maui Economic Opportunity, Mutual Housing Association of Hawaii, the Consuelo Zobel Alger Foundation, Bank of Hawaii, Hawaii Community Loan Fund, the Legal Aid Society of Hawaii, American Friends Service Committee, the department of human services, WorkHawaii, and the department of community services of the city and county of Honolulu.

The legislature further finds that Hawaii residents are already beginning to benefit from IDAs, such as:

(1) Through a partnership between the Waimanalo Community Development Corporation and the housing and community development corporation of Hawaii, up to thirty-four public housing residents will be able to purchase a newly reconstructed unit using moneys the residents have saved in these accounts;
(2) The Mutual Housing Association of Hawaii and the Pacific Housing Assistance Corporation have similar programs on Kauai and Oahu, respectively; and
(3) Focusing on savings for business start-up, Parents and Children Together, in partnership with Bank of Hawaii and the city and county of Honolulu, runs a nationally recognized IDA program on Oahu.

The purpose of this part is to promote the growth of IDAs by:

(1) Establishing IDAs and giving tax incentives to encourage private sector support of an IDA match; and
(2) Making an appropriation to be used as matching funds.

SECTION 25. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
INDIVIDUAL DEVELOPMENT ACCOUNTS

§ **-1 Definitions.** As used in this chapter:

"Eligible educational institution" means:

(1) An institution described in sections 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections are in effect on the date of the enactment of this chapter; and
(2) An area vocational education school defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)), as such sections are in effect on the date of the enactment of this chapter.

"Fiduciary organization" means an organization that serves as an intermediary between an individual account holder and the financial institution holding the individual's individual development account funds. Fiduciary organizations may include:

(1) One or more not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Code; or

(2) State or local government agencies submitting an application jointly with another organization.

Nothing in this definition shall be construed as preventing an organization described in paragraph (2) from cooperating with a financial institution or for-profit community development corporation to carry out the purposes of this chapter.

The fiduciary organization's responsibilities may include:

(1) Marketing participation;
(2) Soliciting matching contributions;
(3) Counseling program participants; and
(4) Conducting required verification and compliance activities.

"Financial institution" means an organization authorized to do business pursuant to chapter 412, or under federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

"Household" means adults related by blood, marriage, or adoption, or who are unrelated but have maintained a stable family relationship together over a period of time, and individuals under eighteen years of age related to the above adults by marriage, blood, or adoption, who are living together. Living together refers to domicile as evidence by the parties' intent to maintain a home for their family and does not include a temporary visit.

"Individual development account" means an optional, interest bearing, subsidized, tax-benefitted account used exclusively for the purpose of paying the qualified expenditure of an eligible individual as determined by the fiduciary organization.

"Post-secondary educational expenses" means:

(1) Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution; and
(2) Fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

"Qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence and shall include any usual or reasonable settlement, financing, or other closing costs.

"Qualified business" means any business that does not contravene any law or public policy.

"Qualified business capitalization expenses" means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

"Qualified expenditures" means an expense as determined by a fiduciary organization, which may include but not be limited to:

(1) Costs associated with first home-ownership;
(2) Post-secondary education;
(3) Vocational training; and
(4) Small or micro-business capitalization.

"Qualified plan" means a business plan or a plan to use a business asset purchased, that:

(1) Is approved by a financial institution, a micro-enterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;
(2) Includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and
(3) May require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

"Qualified principal residence" means a principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed one hundred per cent of the average area

purchase price applicable to such residence (determined in accordance with paragraphs (2) and (3) of section 143(e) of the Code).

§ **-2 Eligible individuals.** (a) The income of the household of the individual development account holder shall not exceed eighty per cent of the area household median income.

(b) The individual shall enter into an individual development account agreement with a fiduciary organization.

§ **-3 Fiduciary organizations.** (a) Fiduciary organizations shall serve as an intermediary between individual development account holders and financial institutions holding accounts. The fiduciary organization's responsibilities may include:

(1) Marketing participation;
(2) Soliciting matching contributions;
(3) Counseling program participants; and
(4) Conducting verification and compliance activities.

(b) Locally-based organizations shall enter into a competitive process for the right to become fiduciary organizations for a portion of the State matching dollars that would be authorized initially. Fiduciary organization proposals shall be evaluated and participation rights awarded on the basis of such items as:

(1) Their ability to market the program to potential individual development account holders and potential matching fund contributors;
(2) Their ability to provide safe and secure investments for individual development accounts;
(3) Their overall administrative capacity, including:
    (A) Certifications or verifications required to assure compliance with eligibility requirements;
    (B) Authorized uses of the accounts matching contributions by individuals or businesses; and
    (C) Penalties for unauthorized distributions;
(4) Their capacity to provide financial counseling and other related services to potential participants; and
(5) Their links to other activities designed to increase the independence of individuals and families through high return investments, including homeownership, education and training, and small business development.

(c) If the State approves an application to fund an individual development account project under this section, the State shall, not later than one month after the date of the enactment of this Act, authorize the applicant to conduct the project with state funds for five project years in accordance with the approved application and this section; provided that an applicant may apply for funding during future fiscal years for five project years if the State lacks the resources to fund an individual development account project pursuant to this subsection.

(d) For each individual development account program approved under this section, the State shall make a grant to the qualified entity or collaboration of entities authorized to conduct the project on the first day of the project year in an amount not to exceed $100,000 per year for five years.

(e) From among the individuals eligible for assistance under the Hawaii individual development account program, each selected fiduciary organization shall select the individuals whom the fiduciary organization deems to be best suited to receive such assistance.

§ **-4 Penalties.** (a) The fiduciary organization shall establish a grievance committee and a procedure to hear, review, and decide in writing any grievance made by an individual development account holder who disputes a decision of the operating organization that a withdrawal is subject to penalty.

(b) Each fiduciary organization shall establish regulations as are necessary, including prohibiting eligibility for further assistance under an individual development account project conducted under this chapter, to ensure compliance with this chapter if an individual participating in the individual development account project moves from the community in which the project is conducted or is otherwise unable to continue participating in the project.

§ **-5 Death.** In the event of an account holder's death, the account may be transferred to the ownership of a contingent beneficiary. An account holder shall name contingent beneficiaries at the time the account is established and may change beneficiaries at any time. If the named beneficiary is deceased or otherwise cannot accept the transfer, the moneys shall be transferred to the individual development account match fund of the fiduciary organization.

§ **-6 Financial institutions.** (a) Financial institutions shall be permitted to establish individual development accounts pursuant to this chapter. The financial institution shall certify to the fiduciary organization, on forms prescribed by same and accompanied by any documentation required by it, that such accounts have been established pursuant to all the provisions of this chapter and that deposits have been made on behalf of the account holder.

(b) A financial institution establishing an individual development account shall:

(1) Keep the account in the name of the account holder;

(2) Permit deposits to be made in the account by the following, subject to the indicated conditions:

(A) The account holder; or

(B) A contribution made on behalf of the account holder. Such deposits may include moneys to match the account holder's deposits.

§ **-7 Assets; disregarded.** The department of human services and the housing and community development corporation of Hawaii shall collaborate with individual development account fiduciary organizations to ensure that the accounts as provided for in this chapter, including any earned interest, shall be disregarded in the determination of benefits or eligibility for services account holders may receive from said agencies as allowed by federal and state laws and regulations.

The department of human services shall establish rules to be aligned with individual development accounts after the approval of this Act.

§ **-8 Matches.** (a) The State shall match an amount of up to $100,000 per calendar year for individual development accounts.

(b) Not more than a 2:1 match of state funds to account holder deposits shall be deposited into any individual development account in a given year.

§ **-9 Tax exemption.** All moneys contributed into an individual development account, including state and private matches, individual savings, and interest earned, shall be exempt from taxation.

§ **-10 Tax credit.** (a) Individuals, organizations, or businesses contributing matching funds for individual development accounts shall receive a tax credit equal to fifty per cent of the amount contributed.

(b) Individuals, organizations, and businesses seeking the tax credit can contribute a matching share to designated individuals or contribute to a fiduciary organization and permit it to allocate the funds to all of its participants on a proportionate basis.

(c) The administrator of the fiduciary organization, with the cooperation of the participating organizations, shall maintain records of the names of contributors and the total amount each contributor contributes to an individual development account match fund for the calendar year.

(d) The state shall provide no more than $1,000,000 in tax credits for private individuals, businesses, and organizations contributing funds to individual development account programs.

§ **-11 Administration; evaluation; information; reporting.** (a) The fiduciary organization running an individual development account program shall have sole authority over the administration of the project. The state may prescribe only such regulations with respect to demonstration projects under this chapter as are necessary to ensure compliance pursuant to this chapter.

(b) Each individual development account program shall annually report the number of accounts, the amount of savings and matches for each account, the uses of the account, and the number of businesses, homes, and educations purchased, as well as other information as may be required for responsible operation of the program.

(c) The fiduciary organization shall submit to the legislature its findings and recommendations no later than twenty days prior to the convening of each legislative session.

(d) Selected fiduciary organizations may use no more than ten per cent of state funds as appropriated under this Act to cover administrative costs in any given year."

SECTION 26. The department of taxation shall submit proposed legislation establishing a tax credit for individual development accounts to the legislature no later than twenty days prior to the convening of the regular session of 2000.

PART X

SECTION 27. Section 29-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury an interagency federal revenue maximization revolving fund into which shall be deposited all <u>funds and</u> proceeds collected from the federal government and third-party payors for [reimbursable] costs not previously claimed by the State, with the exception of proceeds collected for services provided by the Hawaii health systems corporation, for reimbursement by federally-funded state programs. For purposes of this chapter, federally-funded state programs include but shall not be limited to those federally-funded programs within the departments of human services, education, and health. Expenditures and transfers from the fund shall be made by the comptroller in proportional allocations established by the comptroller and the director of finance. Transfers shall be made to the department claiming the reimbursement for expenses incurred related to federal fund reimbursement claims and to the general fund of the State. Moneys in the fund may be expended for consultant services rendered under subsection (b)."

SECTION 28. Act 11, Special Session Laws of Hawaii 1995, is amended by amending section 15 to read as follows:

"SECTION 15. This Act shall take effect on July 1, 1995; provided that:
(1) Section 10 shall take effect on June 29, 1995; and
(2) Sections 3, 4, and 8 shall take effect on July 1, 1996[; and
(3) Section 2 shall be repealed on June 30, 1999]."

SECTION 29. There is appropriated out of the revenues of the interagency federal revenue maximization revolving fund the sum of $100,000 or so much thereof as may be necessary for fiscal year 1999-2000 and the sum of $100,000 or so much thereof as may be necessary for fiscal year 2000-2001 to the department of education for expenses, including the creation and hiring of temporary staff, related to the recovery of federal fund reimbursements under section 29-24, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of education.

SECTION 30. There is appropriated out of the revenues of the interagency federal revenue maximization revolving fund the sum of $150,000 or so much thereof as may be necessary for fiscal year 1999-2000 and the sum of $150,000 or so much thereof as may be necessary for fiscal year 2000-2001 to the department of health for expenses, including the creation and hiring of temporary staff, related to the recovery of federal fund reimbursements under section 29-24, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of health.

PART XI

SECTION 31. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

SECTION 32. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 33. This Act shall take effect upon its approval; provided that:
(1) Part I, Part III, and Part V, and sections 29 and 30 of this Act shall take effect on July 1, 1999; and
(2) Section 28 shall take effect on June 29, 1999.

(Approved June 28, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 161 S.B. NO. 949

A Bill for an Act Relating to the Uniform Unincorporated Nonprofit Association.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

§ **-1 Definitions.** As used in this chapter:

"Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

"Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

§ **-2 Supplementary general principles of law and equity.** Principles of law and equity supplement this chapter unless displaced by a particular provision of it.

§ **-3 Territorial application.** Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

§ **-4 Real and personal property; nonprofit association as legatee, devisee, or beneficiary.** (a) A nonprofit association shall be a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

§ **-5 Statement of authority as to real property.** (a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the registrar of the land court or in the bureau of conveyances, whichever is the office in which a transfer of the property would be recorded.

(c) A statement of authority shall set forth:

(1) The name of the nonprofit association;

(2) The federal tax identification number, if any, of the nonprofit association;
(3) The address in this state, including the street address, if any, of the nonprofit association or, if the nonprofit association does not have an address in this state, its address out of state;
(4) That it is an unincorporated nonprofit association; and
(5) The name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(d) A statement of authority shall be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) A filing officer may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority shall meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment shall be canceled by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office in which a transfer of real property would be recorded, the authority of the person named in a statement of authority shall be conclusive in favor of a person who gives value without notice that the person lacks authority.

§ **-6 Liability in contract and tort.** (a) A nonprofit association shall be a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(b) A person shall not be liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(c) A person shall not be liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable shall not be imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(e) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

§ **-7 Capacity to assert and defend; standing.** (a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.

§ -8 **Effect of judgment or order.** A judgment or order against a nonprofit association shall not by itself be a judgment or order against a member or a person authorized to participate in the management of the affairs of the nonprofit association.

§ -9 **Disposition of personal property of inactive nonprofit association.** If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:

(1) If a document of the nonprofit association specifies a person to whom transfer is to be made under those circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes or to a government, governmental subdivision, agency, or instrumentality.

§ -10 **Appointment of agent to receive service of process.** (a) A nonprofit association may file in the office of the registrar of the land court or in the bureau of conveyances a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent shall set forth:

(1) The name of the nonprofit association;

(2) The federal tax identification number, if any, of the nonprofit association;

(3) The address in this state, including the street address, if any, of the nonprofit association or, if the nonprofit association does not have an address in this state, its address out of state; and

(4) The name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent shall be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement shall also be signed and acknowledged by the person to be appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the registrar of the land court or in the bureau of conveyances and giving notice to the nonprofit association.

(d) A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to or cancellation of a statement appointing an agent to receive service of process shall meet the requirements for execution of an original statement.

§ -11 **Claim not abated by change.** A claim for relief against a nonprofit association shall not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

§ -12 **Venue.** For purposes of venue, a nonprofit association shall be a resident of the county in which it has an office.

§ -13 **Summons and complaint; service on whom.** In an action or proceeding against a nonprofit association, a summons and complaint shall be served on the agent authorized by appointment to receive service of process, the officer, managing or general agent, or the person authorized to participate in the

management of its affairs. If none of them can be served, service may be made on a member."

SECTION 2. If, before the effective date of this Act, an estate or interest in real or personal property was by terms of the transfer purportedly transferred to a nonprofit association but under the law the estate or interest did not vest in the nonprofit association, on the effective date of this Act the estate or interest vests in the nonprofit association, unless the parties had treated the transfer as ineffective.

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 162 S.B. NO. 1101

A Bill for an Act Relating to Remedies of Part VII, Chapter 103D, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103D-701, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103D-701[]] Authority to resolve protested solicitations and awards.** (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or [the head of a purchasing agency. The] a designee as specified in the solicitation. A protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto[.]; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the posting of award of the contract either under section 103D-302 or 103D-303, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.

(b) The chief procurement officer[, the head of a purchasing agency,] or a designee [of either officer], prior to the commencement of an administrative proceeding under section 103D-709 or an action in court [concerning the controversy,] pursuant to section 103D-710, may settle and resolve a protest [of an aggrieved bidder, offeror, or contractor, actual or prospective,] concerning the solicitation or award of a contract. This authority shall be exercised in accordance with rules adopted by the policy board.

(c) If the protest is not resolved by mutual agreement, the chief procurement officer[, the head of a purchasing agency,] or a designee [of either officer] shall promptly issue a decision in writing[.] to uphold or deny the protest. The decision shall:

(1) State the reasons for the action taken; and
(2) Inform the protestor of the protestor's right to [review] an administrative proceeding as provided in this part[.], if applicable.

(d) A copy of the decision under subsection (c) shall be mailed or otherwise furnished immediately to the protestor and any other party intervening.

(e) A decision under subsection (c) shall be final and conclusive, unless [fraudulent, or] any person adversely affected by the decision commences an administrative proceeding under section 103D-709.

(f) In the event of a timely protest under subsection (a), no further action shall be taken on the solicitation or the award of the contract until the chief procurement officer[, after consultation with the head of the using agency, or the head of the purchasing agency,] makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the State.

(g) In addition to any other relief, when a protest is sustained and the [protesting bidder or offeror] protestor should have been awarded the contract under the solicitation but is not, then the [protesting bidder or offeror] protestor shall be entitled to the [reasonable] actual costs reasonably incurred in connection with the solicitation, including bid or proposal preparation costs [other than] but not attorney's fees."

SECTION 2. Section 103D-702, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103D-702[]] Authority to debar or suspend.** (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer [or the head of a purchasing agency], after consultation with the using agency and the [department of the] attorney general[,] or corporation counsel, may debar a person for cause from consideration for award of all public contracts[.] and from performance on any public contract. The debarment period shall not [be for a period of more than] exceed three years. The same officer, after consultation with the using agency and the [department of the] attorney general[,] or corporation counsel, may suspend a person from consideration for award of all public contracts and from performance on any public contract if there is probable cause for debarment. The suspension period shall not [be for a period exceeding] exceed three months. The authority to debar or suspend shall be exercised in accordance with the procedures prescribed by rules adopted by the policy board.

(b) The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(2) Conviction under state or federal statutes relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the chief procurement officer [or the head of a purchasing agency] to be so serious as to justify debarment action:

(A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance

caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) Any other cause the chief procurement officer [or the head of a purchasing agency] determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy board; and

(6) Violation of the ethical standards set forth in chapter 84 and its implementing rules, or the charters and ordinances of the several counties and their implementing rules.

(c) The chief procurement officer [or the head of a purchasing agency] shall issue a written decision to debar or suspend. The decision shall:

(1) State the reasons for the action taken; and

(2) Inform the debarred or suspended person involved of [its] the person's rights to review as provided in this part.

(d) A copy of the decision under subsection (c) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(e) The chief procurement officer shall transmit a copy of the decision to debar or suspend a contractor to the state procurement office, which shall distribute a list to all governmental bodies containing the names of persons or firms debarred or suspended from consideration for award of all public contracts [by the State.] and from performance on any public contract.

(f) Upon written notification under subsection (e), the chief procurement officer shall make a written determination whether to allow the debarred or suspended person or firm to continue performance on any contract awarded prior to the effective date of the debarment or suspension.

[(f)] (g) A decision under subsection (c) shall be final and conclusive, unless [fraudulent, or] the debarred or suspended person commences an administrative proceeding under section 103D-709."

SECTION 3. Section 103D-703, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

"(b) The chief procurement officer[, the head of a purchasing agency,] or a designee [of either officer] is authorized, prior to commencement of an action in a court [concerning the controversy,] brought pursuant to section 103D-711, to settle and resolve a controversy described in subsection (a). This authority shall be exercised in accordance with rules adopted by the policy board.

(c) If such a controversy is not resolved by mutual agreement, the chief procurement officer[, the head of a purchasing agency,] or [the] a designee [of either officer] shall promptly issue a decision in writing. The decision shall:

(1) State the reasons for the action taken; and

(2) Inform the contractor of [its] the contractor's right to initiate a judicial action as provided in this part."

2. By amending subsections (e) and (f) to read:

"(e) The decision under subsection (c) shall be final and conclusive unless [fraudulent, or] the contractor commences a judicial action in accordance with section 103D-711.

(f) If the chief procurement officer[, the head of the purchasing agency,] or [the] a designee [of either officer] does not issue the written decision required under subsection (c) within ninety days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received."

SECTION 4. Section 103D-705, Hawaii Revised Statutes, is amended to read as follows:

"[[]§103D-705[]] **Solicitations or awards in violation of law.** The provisions of section 103D-706 and section 103D-707 apply where it is determined [administratively] by the chief procurement officer or a designee under [sections] section 103D-701[,] or 103D-703[, and] or where it is determined administratively under section 103D-709, or upon judicial review [or action] under [sections] section 103D-710 [and] or judicial action under section 103D-711, that a solicitation or award of a contract is in violation of the law."

SECTION 5. Section 103D-707, Hawaii Revised Statutes, is amended to read as follows:

"[[]§103D-707[]] **Remedies after an award.** If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:
   (A) The contract may be ratified and affirmed, or modified; provided it is determined that doing so is in the best interests of the State; or
   (B) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses, other than attorney's fees, reasonably incurred under the contract, plus a reasonable profit, [prior to the] with such expenses and profit calculated not for the entire term of the contract but only to the point of termination;
(2) If the person awarded the contract has acted fraudulently or in bad faith:
   (A) The contract may be declared null and void; or
   (B) The contract may be ratified and affirmed, or modified, if the action is in the best interests of the State, without prejudice to the State's rights to such damages as may be appropriate."

SECTION 6. Section 103D-708, Hawaii Revised Statutes, is amended to read as follows:

"[[]§103D-708[]] **Interest.** Interest on amounts ultimately determined to be due to a contractor or the [State] governmental body shall be payable at the statutory rate applicable to judgments against the State under chapter 662 from the date the governmental body receives notice of the written claim [arose] through the date of decision or judgment, whichever is later[.]; except that if an action is initiated in circuit court pursuant to section 103D-711, interest under this section shall only be calculated until the time such action is initiated. "

SECTION 7. Section 103D-709, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b), and 103D-702(f) may initiate a proceeding under this section. The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. All parties to the proceeding shall be afforded an opportunity to present oral or documentary

evidence, conduct cross-examination as may be required, and argument on all issues involved. The rules of evidence shall [be strictly adhered to.] apply."

2. By amending subsection (f) to read:

"(f) [Hearings officers] The hearings officer shall decide whether the determinations of the chief procurement officer or the [head of the purchasing agency, or their respective designees] chief procurement officer's designee were in accordance with the Constitution, statutes, [regulations,] rules, and the terms and conditions of the solicitation or contract[.], and shall order such relief as may be appropriate in accordance with this chapter."

SECTION 8. Section 103D-710, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Any person or governmental body] Only parties to proceedings under section 103D-709 who are aggrieved by a final decision of a hearings officer under that section [103D-709] may apply for judicial review of that decision. The proceedings for review shall be instituted in the supreme court."

SECTION 9. Section 103D-711, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) [A person] Only parties to the contract aggrieved by a decision issued pursuant to section 103D-703 by a state chief procurement officer or [head of a purchasing agency] a designee may initiate an action under section 661-1.

(b) A person aggrieved by a decision issued pursuant to section 103D-703 by a county chief procurement officer or [head of a purchasing agency] a designee may initiate an action under, or by virtue of, the contract in controversy in the circuit court.

(c) A governmental body aggrieved by a decision issued pursuant to section 103D-703 by a state or county chief procurement officer or [head of a purchasing agency] a designee may initiate an action under, or by virtue of, the contract in controversy in the circuit court."

SECTION 10. Section 103D-712, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Requests for administrative review under section 103D-709 shall be made directly to the office of administrative hearings of the department of commerce and consumer affairs within seven calendar days of the issuance of a written determination under [sections] section 103D-310, 103D-701, or 103D-702."

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

ACT 163

S.B. NO. 1129

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The purpose of this part is to protect the public, maintain high standards of professional competence in the insurance industry, and improve the insurance skills and knowledge of general agents, subagents, solicitors, designated representatives, and nonresident agents licensed by the department of commerce and consumer affairs, by prescribing minimum continuing education in approved subjects.

SECTION 2. Article 9 of chapter 431, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . CONTINUING EDUCATION**

§431:9-A Definitions. As used in this part, unless the context requires otherwise:

"Approved continuing education course" means a course approved by the commissioner following receipt of recommendations from various insurance professionals.

"Approved course provider" means an organization or individual that offers a continuing education course and has been approved by the commissioner.

"Credit hour" means the value assigned to an hour of instruction in an approved continuing education course.

"Licensee" means a general agent, subagent, solicitor, designated representative, or nonresident agent as defined in article 9.

§431:9-B Prerequisites for license renewal. (a) In addition to payment of fees required in section 431:7-101, to qualify for a license renewal, a licensee shall:

(1) During the twenty-three months preceding a license renewal, complete the required number of credit hours as set forth in subsection (b) in approved continuing education courses; and

(2) Pay the fees as required under section 431:7-101.

(b) The required number of credit hours shall be as follows:

(1) For a licensee authorized to sell classes of insurance in only one of the following groups:

(A) Life or disability; or

(B) Property, marine and transportation, vehicle general casualty, or surety;

the requisite number of credit hours shall be twenty hours relating to the class of insurance for which the license is held, including three credit hours relating to the insurance code and insurance administrative rules;

(2) For a licensee with a license to sell classes of insurance in both groups in the subparagraphs of paragraph (1), the total requisite number of credit hours shall be thirty hours, of which:

(A) Twelve hours shall relate to paragraph (1)(A) of which three hours shall relate to the insurance code and administrative rules relating to the class of insurance for which the license is held; and

(B) Eighteen hours shall relate to paragraph (1)(B) of which three hours shall relate to the insurance code and administrative rules relating to the class of insurance for which the license is held.

(c) Continuing education equivalents, as determined by and approved by the commissioner, may include the teaching of continuing education courses and holding certain professional designations, but shall not include the use of carryover credit hours earned in excess of the required hours in any two-year renewal cycle.

(d) Unless an extension of time has been granted in advance by the commissioner, a licensee's failure to satisfy all of the continuing education requirements one month prior to the renewal date shall result in the license being automatically placed on an "inactive" status. To reactivate a license, the licensee shall submit proof to the insurance division that the requisite number of credit hours have been completed and pay any required fees and penalties.

(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. The licensee shall submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.

(f) This section shall not apply to:

(1) A licensee who holds only a limited license under section 431:9-214;

(2) A nonresident agent or broker whose state of domicile has a reciprocity agreement with the State and waives any continuing education requirement for Hawaii licensees holding nonresident licenses; or

(3) A licensee granted an exemption by the commissioner from this section pursuant to rules adopted by the commissioner.

§431:9-C Continuing education recordkeeping. (a) Licensees shall maintain their own continuing education records and shall keep the records for four years after completion of an approved continuing education course.

(b) Approved course providers shall maintain attendance records for five years for the commissioner to verify the attendance and course completion of all licensees enrolled in an approved course. These course providers shall make the records available at all times to the commissioner.

§431:9-D Nondiscrimination. Continuing education courses provided by insurers to their agents shall be subject to the same standards, reviews, and credits as other continuing education courses. Nothing in this chapter is intended to preclude the provision of continuing education courses by insurers to their agents; provided that no credit shall be given for any course unless it is an approved continuing education course.

§431:9-E Penalty. (a) The commissioner shall suspend, revoke, or refuse to extend the license of any licensee who has submitted an invalid, false, or fraudulent certificate of completion, subject to the right of a licensee to have a hearing as provided in section 431:2-308.

(b) The commissioner shall revoke the approval of an approved course provider who has issued a certificate of completion to a licensee who has not attended the continuing education course or who has not met the course requirements, subject to the right of an approved course provider to have a hearing as provided in section 431:2-308."

SECTION 3. Section 431:7-101, Hawaii Revised Statutes, is amended to read as follows:

"**§431:7-101 Fees.** (a) The commissioner shall collect in advance the following fees:

(1) Certificate of authority: Issuance ..... [$600] $900
(2) Organization of domestic insurers and affiliated corporations:
  (A) Application and all other papers required for issuance of solicitation permit, filing ..... [$1,000] $1,500
  (B) Issuance of solicitation permit ..... [$100] $150
(3) General agent's license:
  (A) Issuance, regular license ..... [$50] $75
  (B) Issuance, temporary license ..... [$50] $75
(4) Subagent's license:
  (A) Issuance, regular license ..... [$50] $75
  (B) Issuance, temporary license ..... [$50] $75
(5) Nonresident agent's or broker's license: Issuance ..... [$40] $60
(6) Solicitor's license: Issuance ..... [$40] $60
(7) Independent adjuster's license: Issuance ..... [$40] $60
(8) Public adjuster's license: Issuance ..... [$40] $60
(9) Workers' compensation claims adjuster's limited license: Issuance ..... [$40] $60
(10) Limited license issued pursuant to section 431:9-214(c): Issuance ..... [$40] $60
(11) Managing general agent's license: Issuance ..... [$50] $75
(12) Reinsurance intermediary's license: Issuance ..... [$50] $75
(13) Surplus line broker's license: Issuance ..... [$100] $150
(14) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority or a license are as follows:

(1) [$400] $600 per year for all services (including extension of the certificate of authority) for an authorized insurer[.];
(2) [$50] $75 per year for all services (including extension of the license) for a regularly licensed general agent[.];
(3) [$50] $75 per year for all services (including extension of the license) for a regularly licensed subagent[.];
(4) [$30] $45 per year for all services (including extension of the license) for a regularly licensed nonresident agent or broker[.];
(5) [$20] $30 per year for all services (including extension of the license) for a regularly licensed solicitor[.];
(6) [$30] $45 per year for all services (including extension of the license) for a regularly licensed independent adjuster[.];
(7) [$30] $45 per year for all services (including extension of the license) for a regularly licensed public adjuster[.];
(8) [$30] $45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster[.];
(9) [$30] $45 per year for all services (including extension of the license) for a limited license issued pursuant to section 431:9-214(c)[.];
(10) [$50] $75 per year for all services (including extension of the license) for a regularly licensed managing general agent[.];

(11) [$50] $75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary[.];

(12) [$30] $45 per year for all services (including extension of the license) for a licensed surplus line broker[.]; and

(13) The services referred to in paragraphs (1) to (12) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.

(c) The commissioner shall notify the holder of the certificate of authority issued under article 3 or the license issued under article 9 by written notice at least thirty days prior to the extension date of such certificate or license. If the fee is not paid before or on the extension date, the fee will be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within the thirty days immediately following the extension date, the commissioner may revoke, suspend, or inactivate the certificate of authority or license and shall not reissue, remove the suspension of, or reactivate the certificate of authority or license until the fee and penalty have been paid.

(d) All fees and penalties shall be [remitted by the commissioner to the director of finance not later than the first business day following collection, and shall be placed] deposited to the credit of the [general fund.] insurance regulation fund."

SECTION 4. Section 431:9-232, Hawaii Revised Statutes, is amended to read as follows:

"**§431:9-232 Extension of licenses.** (a) [If the licensee is qualified for the license, the license shall be extended.] Prior to the extension of a license, each licensee shall annually pay the fee required in section 431:7-101 and shall meet the requirements of section 431:9-B.

(b) [No license shall contain an expiration date, but all licenses must be extended from time to time in order to continue to be valid.] A license shall be inactivated if a licensee fails to:

(1) Meet the requirements of section 431:9-B; or

(2) Pay any required fees or penalties.

(c) [(1)] When the commissioner issues or extends a license, the commissioner shall:

[(A)] (1) Determine the extension date[; the extension date], which is that date prior to which the license must be extended[,]; and

[(B)] (2) Notify the licensee in writing[.] of the extension date.

[This] The extension date shall be any date not less than one year and not more than three years after the date of the issue or the last extension[.] of the license."

SECTION 5. During fiscal years 1999-2000 and 2000-2001, there shall be an assessment of all insurers, general agents, subagents, nonresident agents and brokers, solicitors, adjusters, limited licensees under 431:9-214(c), managing general agents, reinsurance intermediaries, surplus lines brokers, and designated representatives. The assessment shall be fifty per cent of the applicable fee amount listed in section 431:7-101(a) prior to the effective date of this Act. The assessment shall be made on August 1, 1999, and August 1, 2000, and shall be due on September 1, 1999, and September 1, 2000, respectively.

If the assessment is not paid when due, the assessment shall be increased by a penalty of fifty per cent of the assessment. If the assessment and the penalty are not paid within thirty days following the due date of September 1, the commissioner may revoke, suspend, or inactivate the certificate of authority or license and shall not

reissue, remove the suspension of, or reactivate the certificate of authority or license until the assessment and penalty have been paid.

SECTION 6. There is appropriated out of the insurance regulation fund the sum of $1,500,000 or so much thereof as may be necessary for fiscal year 1999-2000 and $1,500,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the administration of insurance licensing.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purpose of this Act.

PART II

SECTION 7. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 2 a new section to be appropriately designated and to read as follows:

"**§431:2-A Insurance regulation fund.** (a) There is established a special fund to be designated as the insurance regulation fund. All assessments, fees, fines, penalties, and reimbursements collected by or on behalf of the insurance division under title 24, except for the commissioner's education and training fund (section 431:2-214), the patients' compensation fund (Act 232, Session Laws of Hawaii 1984), the drivers education fund underwriters fee (section 431:10C-115), and the captive insurance administrative fund (section 431:19-101.8), to the extent provided by section 431:19-101.8(b), shall be deposited into the insurance regulation fund. All sums transferred into the insurance regulation fund may be expended by the commissioner to carry out the commissioner's duties and obligations under title 24.

(b) The insurance regulation fund shall be used to defray any administrative costs, including personnel costs, associated with the programs of the division, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, attorneys, investigators, accountants, examiners, and other necessary professional, technical, and support personnel to implement and carry out the purposes of title 24; provided that any position, except any attorney position, that is subject to chapters 76 and 77 prior to the effective date of this part shall remain subject to chapters 76 and 77.

(c) Moneys in the special fund shall not revert to the general fund.

(d) The commissioner shall determine the amount or amounts to be assessed and the time any moneys from assessments are due for each line or type of insurance or entity regulated under title 24; provided that:

(1) The criteria for making the assessment shall be established by rule; provided further that the commissioner shall have provisional authority to make assessments prior to adoption of the rule but this provisional authority shall not extend beyond two years from the effective date of this Act;

(2) The insurers or entities under title 24 shall be provided reasonable notice of when their respective assessments are due;

(3) The assessments by line or type shall bear a reasonable relationship to the costs of regulating the line or type of insurance, including any administrative costs of the division; and

(4) The sum total of all assessments made and collected shall not exceed the special fund ceiling or ceilings related to the fund that are established by the legislature.

As used in this subsection, "reasonable notice" means a period of at least sixty days.

(e) The commissioner may suspend an assessment of any insurer if the commissioner determines that an insurer or entity may reach insolvency or other financial difficulty if the assessment is made against that insurer or entity.

(f) The commissioner shall prepare an annual report to the director, governor, and the legislature of the use of the fund. The report shall describe assessments by line or type of insurance, and expenditures made from the fund including non-payroll operating expenses. The report shall be submitted to the legislature no later than twenty days prior to the convening of each regular legislative session."

SECTION 8. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

(1) Special summer school and intersession fund under section 302A-1310;
(2) School cafeteria special funds of the department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
(6) Special funds established by section 206E-6;
(7) Housing loan program revenue bond special fund;
(8) Housing project bond special fund;
(9) Aloha Tower fund created by section 206J-17;
(10) Domestic violence prevention special fund under section 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;
(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;
(16) Hawaii health systems corporation special funds;
(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section [[]201B-11[]]; [and]
(19) Department of commerce and consumer affairs' special funds; and
(20) Insurance regulation fund under section 431:2-A;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 9. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

(1) Transportation use special fund established by section 261D-1;

(2) Special summer school and intersession fund under section 302A-1310;
(3) School cafeteria special funds of the department of education;
(4) Special funds of the University of Hawaii;
(5) State educational facilities improvement special fund;
(6) Special funds established by section 206E-6;
(7) Aloha Tower fund created by section 206J-17;
(8) Domestic violence prevention special fund under section 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;
(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital special fund established under section 206X-10.5 and the convention center operations special fund established under section 206X-10.6;
(15) Hawaii health systems corporation special funds; and
(16) Tourism special fund established under section [201B-11][1];
(17) Insurance regulation fund under section 431:2-A;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 10. Section 431:2-105.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§431:2-105.5[]] Staff.** There are established within the insurance division of the department of commerce and consumer affairs six positions for technical staff, and three positions for clerical staff, necessary to enable the State to meet and maintain National Association of Insurance Commissioners accreditation standards. These positions shall not be subject to chapters 76 and 77. [The salaries for these positions shall be funded out of the insurance examiners revolving fund, as provided in section 431:2-307.]"

SECTION 11. Section 431:2-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The insurer, person, or guaranty fund examined and liable therefor shall pay to the commissioner's examiners upon presentation of an itemized statement, their actual travel expenses, their reasonable living expense allowance, and their per diem compensation at a reasonable rate approved by the commissioner, incurred on account of the examination. All payments collected by the commissioner shall be remitted to:

(1) The [general fund of the State;] insurance regulation fund; or
[(2) The insurance examiner's revolving fund if independent contractor examiners were employed for the examination; or
(3)] (2) The captive insurance administrative fund if independent contractor examiners or captive staff examiners were employed for a captive insurer's examination.

The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination."

SECTION 12. Section 431:19-101.8, Hawaii Revised Statutes, is amended to read as follows:

"[[]§431:19-101.8[]] **Captive insurance administrative fund.** (a) The commissioner may establish a separate fund designated as the captive insurance administrative fund.

[(b) The commissioner may appoint staff examiners exempt from chapters 76 and 77, to examine the affairs, transactions, accounts, records, documents, and assets of each authorized captive insurer licensed under this article. The commissioner may also appoint administrative support personnel exempt from chapters 76 and 77, to assist and support the examiners.

(c) The commissioner may pay the salaries of the captive insurance administrator, the staff examiners, and the administrative support personnel from the captive insurance administrative fund. The commissioner may also appoint independent contractor examiners to examine captive insurance companies. The funds may also be used for other expenses relating to the monitoring, regulation, and examination of captive insurance companies, the development of the captive insurance industry under this article, and the education and training of the captive insurance administrator and examiners.

(d)] (b) All premium taxes collected from captive insurance companies licensed in this State under this article, all captive insurance company application fees, annual license fees, and examination fees collected pursuant to this article shall be credited to the captive insurance [[]administrative[]] fund. Each fiscal year, the commissioner [may expend out of the fund] shall transfer out of the fund and deposit into the insurance regulation fund a total of forty per cent of the total moneys credited to the fund in the prior fiscal year or $250,000, whichever is greater, to pay for the expenditures contemplated by this section. Subject to the foregoing expenditure limit, all moneys remaining in the fund shall revert to the general fund.

[(e) The commissioner shall prepare and submit an annual report to the legislature on the use of the captive insurance [administrative] fund.]"

SECTION 13. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under section 431:2-301 through section [431:2-307] 431:2-307.5 of the code are extended to and imposed upon the commissioner in respect to examinations of captive insurance companies."

SECTION 14. Section 431:19-115.5, Hawaii Revised Statutes, is amended to read as follows:

"**§431:19-115.5 Applicability of other laws to captive insurance companies writing motor vehicle insurance policies in this State.** Captive insurance companies writing motor vehicle insurance policies in this State shall be subject to sections 431:10C-102, 431:10C-103, 431:10C-107, 431:10C-108, 431:10C-109, 431:10C-112, 431:10C-115, [431:10C-115.5,] 431:10C-119, 431:10C-120, 431:10C-207, 431:10C-211, 431:10C-212, 431:10C-213, 431:10C-215, 431:10C-301, and 431:10C-303 through 431:10C-315. Captive insurance companies shall also be subject to the rules adopted by the commissioner to implement these sections."

SECTION 15. Sections 431:2-203, 431:2-307.5, 431:3-221, 431:7-203, 431:9-238, 431:11-111, 431:15-334, and 431:15-335, Hawaii Revised Statutes, are amended by:

(1) Substituting the term "insurance regulation fund", or like term, wherever the term "general fund", or like term, appears, as the context requires; and

(2) Substituting the term "insurance regulation fund", or like term, wherever the term "state treasurer", or like term, appears, as the context requires.

SECTION 16. Act 234, Session Laws of Hawaii 1995, is amended by amending section 21 to read as follows:

"SECTION 21. There is established a special fund for the administration of workers' compensation insurance by the insurance commissioner to be called the workers' compensation insurance administration special fund.

This fund shall be used to pay the costs incurred in administering workers' compensation insurance. Costs shall include but not be limited to:

(1) Costs related to public education and information;
(2) Costs relating to closed claims studies;
(3) Other studies and evaluations relating to workers' compensation insurance, which may include an analysis of the classifications of jobs and the assigned risk pool affecting the rates charged by insurers; and
(4) Costs related to administrative contracts with personnel necessary to carry out the purposes of this Act.

For each fiscal year beginning 1995-1996 until fiscal year [2000-2001] 1998-1999,[2] up to $150,000 shall be deposited into this special fund from the following sources:

(1) Fair and equitable assessments to be made by the insurance commissioner on April of each year, on each insurer authorized to transact workers' compensation insurance in this State and each self-insurer;
(2) Fair and equitable assessments to be made by the insurance commissioner for a one-time deposit into the fund, on each insurer authorized to transact workers' compensation insurance in this State and each self-insurer.

As of July 1, [2001,] 1999, all unexpended and unencumbered balances remaining in the special fund shall [transfer to the credit of the state general fund.] be transferred to the insurance regulation fund. After funds are transferred to the insurance regulation fund, the workers' compensation special fund shall be abolished.

[The insurance commissioner shall submit a complete and detailed report on the status of the fund's administration and expenditures to the legislature no later than twenty days before the convening of each regular legislative session.

The insurance commissioner may adopt rules effectuating the purposes of this section.]"

SECTION 17. Act 216, Session Laws of Hawaii 1997, is amended by amending section 13 to read as follows:

"SECTION 13. This Act shall take effect on July 1, 1997, and shall be repealed on June 30, 2000; provided that any statutory or session law material in this Act in existence on June 30, 1997, shall be reenacted on July 1, 2000, in the same form in which it existed on June 30, 1997[.]; and provided further that the amendments made to section 36-27 and 36-30, Hawaii Revised Statutes, by sections 8 and 9 of Act 163, Session Laws of Hawaii 1999, shall be retained."

SECTION 18. Act 142, Session Laws of Hawaii 1998, is amended by amending section 9 to read as follows:

"SECTION 9. This Act shall take effect upon its approval and shall be repealed on July 31, 2003, except that section 3 of this Act shall not be repealed; provided that section[3] 36-27 and 397-5(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act[.]; and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by section 8 of Act 163, Session Laws of Hawaii 1999, shall be retained.

SECTION 19. The director of finance shall transfer and deposit all funds in the following funds unencumbered as of the effective date of this Act into the insurance revolving fund:

(1) The insurance examiners revolving fund (section 431:2-307);
(2) The motor vehicle insurance administration revolving fund (section 431:10C-115.5); or
(3) The workers' compensation insurance administration special fund (Act 234, Session Laws of Hawaii 1995).

Any funds remaining in any of the aforementioned funds on June 30, 1999, shall be transferred into the insurance regulation fund.

SECTION 20. Section 431:2-307, Hawaii Revised Statutes, is repealed.

SECTION 21. Section 431:10C-115.5, Hawaii Revised Statutes, is repealed.

PART III

SECTION 22. Section 386-153, Hawaii Revised Statutes, is amended to read as follows:

"**§386-153 Levy on insurers of employers insured under section 386-121(a)(1).** (a) For the calendar year 1974 and for each calendar year thereafter, insurers of employers, as defined in section 386-1, shall pay a levy determined by the director which shall be based on a percentage on gross premiums, as defined in section 431:7-202(a), derived from workers' compensation insurance issued during the prior year in accordance with chapter 386 and chapter 431, if the levying and collecting of such a levy is required pursuant to section 386-152, which levy shall be collected in the same manner as the tax provided for in section 431:7-202 is collected and shall be deposited in the special compensation fund established in section 386-151. This levy shall be in addition to any tax imposed in chapter 431 on gross premiums derived from workers' compensation insurance.

(b) Notwithstanding subsection (a), from its inception through December 31, 2007, the Hawaii Employers' Mutual Insurance Company, Inc., shall be exempt from this levy; provided that this exemption shall apply to the first $25,000,000 of written premiums in each calendar year; and provided further that annual written premiums in excess of $25,000,000 shall be subject to this levy at the same rate as other insurers. Any moneys heretofore paid by Hawaii Employers' Mutual Insurance Company, Inc., to the special compensation fund shall be retained by the special compensation fund to be credited to future levy balances owed by Hawaii Employers' Mutual Insurance Company, Inc."

PART IV

SECTION 23. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions

or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 24. Statutory material to be repealed is bracketed. New statutory material is underscored.[4]

SECTION 25. In codifying the new part added to articles 2 and 9 of chapter 431, Hawaii Revised Statutes, by sections 2 and 7 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this part. In printing this Act, the revisor of statutes shall insert the appropriate number of this Act in sections 17 and 18 of this Act.

SECTION 26. This Act shall take effect on approval, provided that:

(1) Sections 431:9-B and 431:9-C contained in section 2 of Part I shall become effective on January 1, 2001; and provided further that the twenty-three month period to meet the continuing education requirements shall commence upon the first license renewal of a general agent, subagent, solicitor, designated representative, or nonresident agent after December 31, 2000; and

(2) Part II shall take effect on July 1, 1999; provided further that sections 21 and 22 shall take effect after all funds that are supposed to be credited to the motor vehicle insurance administration revolving fund and the insurance examiners revolving fund are transferred into the insurance regulation special fund.

(Approved June 28, 1999.)

Notes

1. So in original.
2. Comma should not be underscored.
3. Prior to amendment "sections" appeared here.
4. Edited pursuant to HRS §23G-16.5.

ACT 164 S.B. NO. 1139

A Bill for an Act Relating to Limited Liability Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 428, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§428- Amended and restated articles of organization.** (a) A limited liability company at any time may amend and restate its articles of organization by complying with the procedures and requirements of section 428-204.

(b) Upon its adoption, the amended and restated articles of organization shall set forth:

(1) All of the operative provisions of the articles of organization as therefore amended;

(2) The information required by section 428-204; and

(3) A statement that the amended and restated articles of organization supersede the original articles of organization and all amendments thereto.

(c) The amended and restated articles of organization shall be delivered to the director for filing. The director may certify the amended and restated articles of organization as the articles of organization currently in effect, without including the information required to be filed by subsection (b)(2) and (3).''

SECTION 2. Section 428-103, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

''(b) The operating agreement may not:

(1) Unreasonably restrict a right to information or access to records under section 428-408;

(2) Eliminate the duty of loyalty under section 428-409(b) or 428-603(b)(3), but the agreement may:

(A) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(B) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(3) Unreasonably reduce the duty of care under section 428-409(c) or 428-603(b)(3);

(4) Eliminate the obligation of good faith and fair dealing under section 428-409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(5) Vary the right to expel a member in an event specified in section 428-601(5);

(6) Vary the requirement to wind up the limited liability company's business in a case specified in section 428-801(3) or 428-801(4) [or 428-801(5)]; or

(7) Restrict rights of third parties under this chapter, other than managers, members, or their transferees.''

SECTION 3. Section 428-111, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

''(a) A limited liability company may be organized under this chapter for any lawful purpose[; provided that the following purposes are prohibited:

(1) Activities of a financial institution under chapter 412;

(2) Activities under chapter 431; or

(3) Activities under chapter 442, 448, 453, 455, 459, 460, 461, 463E, 465, 466, 471, or 605, or section 554-2.

A limited liability company shall be], subject to any law of this State governing or regulating business. [If the purpose for which a limited liability company is organized or its form makes it subject to a special provision of law, the limited liability company shall also comply with that provision.]''

SECTION 4. Section 428-404, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

''(a) In a member-managed limited liability company:

(1) Each member has equal rights in the management and conduct of the company's business; and

(2) Except as specified in subsection (c) [or in section 428-801(3)(A)], any matter relating to the business of the company may be decided by a majority of the members[; and

(3) Each member who is not an individual must be qualified to transact business in this State].

(b) In a manager-managed limited liability company:

(1) The manager or managers have the exclusive authority to manage and conduct the company's business;

(2) Except as specified in subsection (c) [or in section 428-801(3)(A)], any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(3) A manager shall:

(A) Be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

[(B) Be qualified to transact business in this State if the manager is an entity; and

(C)] (B) Remain in office until a successor has been elected [and qualified], unless the manager resigns or is removed sooner.

(c) The [following] only matters [require] of a limited liability company's business that require the consent of all the members [of the limited liability company:] are:

(1) Amendments to the operating agreement under section 428-103;

(2) Authorization or ratification of acts or transactions under section 428-103(b)(2)(B) which would otherwise violate the duty of loyalty;

(3) Amendments to the articles of organization under section 428-204;

(4) Compromising an obligation to make a contribution under section 428-402(b);

(5) Compromising among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;

(6) Making interim distributions under section 428-405(a);

(7) Admission of a new member;

(8) Use of the company's property to redeem an interest subject to a charging order;

(9) Consent to dissolve the company under section 428-801(2);

(10) Waiving of the right to have the company's business wound up and the company terminated under section 428-802(b);

(11) Merging the company with another entity under section 428-904(c)(1); and

(12) Selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company's property with or without goodwill."

SECTION 5. Section 428-503, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) A transferee who does not become a member is entitled to:

(1) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) Receive, upon dissolution and winding up of the limited liability company's business:

(A) In accordance with the transfer, the net amount otherwise distributable to the transferor; and

(B) A statement of account only from the date of the latest statement of account agreed to by all the members; and

(3) Seek under section [428-801(6),] 428-801(5), a judicial determination that it is equitable to dissolve and wind up the company's business."

SECTION 6. Section 428-603, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [If under section 428-801] Upon a member's dissociation from a limited liability company [results in a dissolution and winding up of the company's business, part VIII shall apply. If a member's dissociation from the company does not result in a dissolution and winding up of the company's business under section 428-801]:

(1) In an at-will company, the company shall cause the dissociated member's company interest to be purchased under part VII; and

(2) In a company having a specified term:

(A) If the company dissolves and winds up its business on or before the expiration of its specified term, part VIII applies to determine the dissociated member's rights to distributions; and

(B) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under part VII on the date of the expiration of the term specified at the time of the member's dissociation."

SECTION 7. Section 428-701, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. In that case the dissociated member is entitled to commence a proceeding to have the company dissolved under section [428-801(5).] 428-801(4)."

SECTION 8. Section 428-702, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under section [428-801(5)(D).] 428-801(4)(D).[1] If a limited liability company is so dissolved, the dissociated member shall have the same rights and priorities in the company's assets as if the sale had not been ordered."

SECTION 9. Section 428-801, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§428-801[]] Events causing dissolution and winding up of company's business.** A limited liability company is dissolved, and its business shall be wound up, upon the occurrence of any of the following events:

(1) An event specified in the operating agreement;

(2) Consent of the number or percentage of members specified in the operating agreement;

[(3) Dissociation of a member-manager or, if none, a member of an at-will company, and dissociation of a member-manager or, if none, a member of a company having a specified term but only if the dissociation was for a reason provided in section 428-601(6) to (10) and occurred before the expiration of the specified term, provided that the company is not dissolved and required to be wound up by reason of the dissociation:

(A) If, within ninety days after the dissociation, a majority of the remaining members agree to continue the business of the company; or

(B) The business of the company is continued under a right to continue stated in the operating agreement;

(4)] (3) An event that makes it unlawful for all or substantially all of the business of the company to be continued[,]; provided that any cure of illegality within ninety days after notice to the company of the event shall be effective retroactively to the date of the event for purposes of this section;

[(5)] (4) On application by a member or a dissociated member, upon entry of a judicial decree that:

(A) The economic purpose of the company is likely to be unreasonably frustrated;

(B) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

(C) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(D) The company failed to purchase the petitioner's distributional interest as required by section 428-701; or

(E) The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner; or

[(6)] (5) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:

(A) After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(B) At any time, if the company was at-will at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer[; or

(7) The expiration of a specified term].''

SECTION 10. Section 428-811, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

''(a) A limited liability company administratively terminated may apply to the director for reinstatement within [ninety days] two years after the effective date of termination. The application shall:

(1) Recite the name of the company and the effective date of its administrative termination;

(2) State that all delinquent annual reports have been filed and that all delinquent fees, penalties, assessments, and costs have been paid; and

(3) Contain a certificate from the director of taxation reciting that all taxes owed by the company have been paid.''

SECTION 11. Section 428-1202, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 13. This Act shall take effect on July 1, 1999; provided that any limited liability company administratively terminated before July 1, 1999, may apply to the director for reinstatement within ninety days after the effective date of

termination.

(Approved June 28, 1999.)

Notes

1. Period should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 165 S.B. NO. 1178

A Bill for an Act Relating to the General Excise Taxation of Related Entities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-23.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to amounts received, charged, or attributable to services furnished by one related entity to another related entity or to imputed or stated interest attributable to loans, advances, or use of capital between related entities.

As used in this subsection:

"Related entities" [mean:] means:

(1) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

(2) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended; [and]

(3) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, [or any other group or combination of these or other tax entities acting as a business unit;] limited liability partnerships, or limited liability companies; and

(4) Any group or combination of the entities described in paragraph (3) constituting a unitary business for income tax purposes;

whether or not the entity is located within or without the State or licensed under this chapter.

"Services" [mean] means legal and accounting services and those managerial and administrative services performed by an employee, officer, partner, trustee, sole proprietor, member, or manager in the person's capacity as an employee, officer, partner, trustee, sole proprietor, member, or manager of one of the related entities and shall include overhead costs attributable to those services."

SECTION 2. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

"**§237-24.7 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

(1) Amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means employees directly engaged in the day-to-day operation of the hotel and employed by the operator.

"Hotel" means an operation licensed under section 445-92.

"Operator" means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

"Owner" means the fee owner or lessee under a recorded lease of a hotel;

(2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

"County transportation system" means a mass transit system of motorized buses providing regularly scheduled transportation within a county.

"Operating contract" or "contract" means a contract to operate and manage a political subdivision's county transportation system, which provides that:

(A) The political subdivision shall exercise substantial control over all aspects of the operator's operation;

(B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and

(C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

"Operator" means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

"Owner" means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.), and that owns all revenues derived therefrom;

(3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;

(4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means an employee directly engaged in the day-to-day operations of the orchard properties and employed by the operator.

"Operator" means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property for the owner where the property contains an area sufficient to make the undertaking economically feasible.

"Orchard property" means any real property that is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial

planting to the first commercially saleable harvest of not less than three years.

"Owner" means a fee owner or lessee under a recorded lease of orchard property;

(5) Taxes on nursing facility income imposed by chapter 346E and passed on and collected by operators of nursing facilities;

(6) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2;

(7) Amounts received as compensation by community organizations, school booster clubs, and nonprofit organizations under a contract with the chief election officer for the provision and compensation of precinct officials and other election-related personnel, services, and activities, pursuant to section 11-5;

(8) Interest received by a person domiciled outside the State from a trust company (as defined in section 412:8-101) acting as payment agent or trustee on behalf of the issuer or payees of an interest bearing instrument or obligation, if the interest would not have been subject to tax under this chapter if paid directly to the person domiciled outside the State without the use of a paying agent or trustee; provided that if the interest would otherwise be taxable under this chapter if paid directly to the person domiciled outside the State, it shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee;

(9) Amounts received by a management company from related entities engaged in the business of selling interstate or foreign common carrier telecommunications services in amounts equal to and which are disbursed by the management company for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means employees directly engaged in the day-to-day operation of related entities engaged in the business of selling interstate or foreign common carrier telecommunications services and employed by the management company.

"Management company" means any person who, pursuant to a written contract with a related entity engaged in the business of selling interstate or foreign common carrier telecommunications services, provides managerial or operational services to that entity.

"Related entities" means:

(A) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

(B) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended; [or]

(C) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, [or any other group or combination of these or other tax entities acting as a busi-

ness unit;] limited liability partnerships, or limited liability companies; and

(D) Any group or combination of the entities described in paragraph (C) constituting a unitary business for income tax purposes;

whether or not the entity is located within or without the State or licensed under this chapter; and

(10) Amounts received as grants under section 206M-15."

SECTION 3. This Act does not affect rights and duties that matured, assessments and penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1999, and apply to gross income or gross proceeds received after June 30, 1999.

(Approved June 28, 1999.)

ACT 166 H.B. NO. 86

A Bill for an Act Relating to State Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13 of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance," the legislature finds and declares as follows:

(1) Limitation on general obligation debt. The debt limit of the state is set forth in Article VII, Section 13 of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, Section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not

exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under said Article VII, Section 13.

(2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1998-1999 and estimated for each fiscal year from 1999-2000 to 2002-2003, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1995-1996	$3,136,543,568	
1996-1997	3,115,264,737	
1997-1998	3,195,967,036	
1998-1999	3,241,641,000	$582,612,813
1999-2000	3,074,377,000	589,093,821
2000-2001	3,151,918,000	586,572,411
2001-2002	3,207,763,000	583,856,053
2002-2003	(Not Applicable)	581,766,910

For fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002 and 2002-2003 respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1995-1996, 1996-1997, and 1997-1998 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 1998, dated November 24, 1998. The net general fund revenues for fiscal years 1998-1999 to 2001-2002 are estimates, based on general fund revenue estimates made as of March 12, 1999, by the council on revenues, the body assigned by Article VII, Section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

(3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, Section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 1999 is as follows for fiscal year 1999-2000 to fiscal year 2005-2006:

Fiscal Year	Principal and Interest
1999-2000	$337,057,106
2000-2001	335,665,371
2001-2002	351,151,084
2002-2003	394,858,561
2003-2004	350,610,135
2004-2005	345,436,743
2005-2006	319,768,363

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2006-2007 to

fiscal year 2017-2018 when the final installment of $44,962,638 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is $191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

(4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of March 31, 1999, adjusted for lapses as provided in House Bill No. 100, H.D. 1, S.D. 1, C.D. 1[1] (the General Appropriations Act of 1999) amounting to $17,946,122 and change in means of financing from general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds to revenue bond funds amounting to $8,151,735, the total amount of authorized but unissued general obligation bonds is $1,064,679,670. The total amount of general obligation bonds authorized by this Act is $835,315,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is $1,899,994,670. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is $191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

(5) Proposed general obligation bond issuance. As reported herein for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003, the State proposes to issue $500,000,000 during the remainder of fiscal year 1998-1999 $500,000,000 during each of the second half of fiscal years 1999-2000 and 2000-2001, and $200,000,000 during each of the second half of fiscal years 2001-2002 and 2002-2003. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, and interest payments commencing six months from the date of issuance and being paid semiannually thereafter. As reported by the department of budget and finance, the bond will be maturing in substantially equal annual installments of principal and interest. It is assumed that this practice will be applied to the bonds which are proposed to be issued.

(6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the fiscal years 1998-1999 to 2001-2002 is $1,700,000,000. An additional $200,000,000 is proposed to be issued in fiscal year 2002-2003. The total amount of $1,700,000,000 which is proposed to be issued through fiscal year 2001-2002 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, and the bonds authorized by this Act, the total amount of which is $1,899,994,670, as reported in paragraph (4), except for $199,994,670. It is assumed that the appropriations to which an additional $199,994,670 in bond issuance needs to be applied will have been encumbered as of June 30, 2002. The $200,000,000 which is

proposed to be issued in fiscal year 2002-2003 will be sufficient to meet the requirements of the June 30, 2002 encumbrances in the amount of $199,994,670. The amount of assumed encumbrances as of June 30, 2002 is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 2002, and the amount of June 30, 2002 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2002-2003, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

(7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:

(i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and

(ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 6.5 percent for the ten years from fiscal year 1999-2000 to fiscal year 2008-2009. For the purpose of this declaration, the assumption is made that five percent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13 of the State Constitution for the fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002 and 2002-2003 are as follows:

Fiscal year	Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution
1998-1999	$3,467,853,736
1999-2000	3,730,063,538
2000-2001	4,021,180,973
2001-2002	3,986,790,956
2002-2003	3,881,223,583

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven percent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

(8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 5.25% for the remainder of fiscal year 1998-1999, 5.75% during fiscal year 1999-2000 and 6.25% thereafter, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

Time of Issuance and Amount to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties
2nd half FY 1998-1999 $475,000,000	582,612,813	436,290,073 (2003)
2nd half FY 1999-2000 $475,000,000	589,093,821	480,097,573 (2003)
2nd half FY 2000-2001 $475,000,000	586,572,411	509,785,073 (2003)
2nd half FY 2001-2002 $190,000,000	583,856,053	521,660,073 (2003)

2nd half FY 2002-2003 $190,000,000	581,766,910	505,223,205 (2005)

(9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 100, H.D. 1, S.D. 1, C.D. 1[1] (the General Appropriations Act of 1999), House Bill No. 1450, H.D. 1, S.D. 2, C.D. 1[2] (the Judiciary Appropriations Act of 1999), and House Bill No. 1064, H.D. 1,[3] (Relating to Hawaii Hurricane Relief Fund Bonds) passed by this regular session of 1999, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of the general obligation bonds so issued shall not exceed $835,315,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with Section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 29, 1999.)

Notes

1. Act 91.
2. Act 156.
3. Act 151.

ACT 167 H.B. NO. 1035

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-29, Hawaii Revised Statutes, is amended to read as follows:

"**§88-29 Officers, employees, legal adviser.** The board of trustees shall elect from its membership a chairperson, and by a majority vote of all its members, shall appoint an administrator and a chief investment officer who shall be exempt from chapters 76 and 77 and serve under and at the pleasure of the board. Effective July 1, 1992, the salary of the administrator shall be set by the board within the range established for deputy directors. The board shall engage actuarial and other services as shall be required to transact the business of the system. The compensation for all services engaged by the board, and all other expenses of the board necessary for the operation of the system, shall be paid at rates and in amounts the board shall approve.

The attorney general or an appointed representative may serve as legal adviser to the board of trustees or the board of trustees may select its own legal counsel."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 29, 1999.)

ACT 168 S.B. NO. 1282

A Bill for an Act Relating to Investments of the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

"**§88-119 Investments.** Investments may be made in:

(1) Real estate loans and mortgages. Obligations (as defined in section 431:6-101) of any of the following classes:
   (A) Obligations secured by mortgages of nonprofit corporations desiring to build multirental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action;
   (B) Obligations secured by mortgages insured by the Federal Housing Administration;
   (C) Obligations for the repayment of home loans made under the Servicemen's Readjustment Act of 1944 or under Title II of the National Housing Act;
   (D) Other obligations secured by first mortgages on unencumbered improved real estate owned in fee simple; provided that the amount of the obligation [shall not] at the time investment is

made therein shall not exceed eighty per cent of the value of the real estate and improvements mortgaged to secure it, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the real estate and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer [should] shall be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the real estate and improvements mortgaged to secure it. [Such] The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the real estate and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees. Real estate shall not be deemed to be encumbered within the meaning of this subparagraph by reason of the existence of any of the restrictions, charges, or claims described in section 431:6-308;

(E) Other obligations secured by first mortgages of leasehold interests in improved real estate; provided that:

(i) Each such leasehold interest at such time shall have a current term extending at least two years beyond the stated maturity of the obligation it secures; and

(ii) The amount of the obligation [shall not] at the time investment is made therein shall not exceed eighty per cent of the value of the respective leasehold interest and improvements, and except that the amount of the obligation[,] at the time investment is made therein[,] may exceed eighty per cent but no more than ninety per cent of the value of the leasehold interest and improvements mortgaged to secure it;

provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer [should] shall be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the leasehold interest and improvements mortgaged to secure it. [Such] The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees;

(F) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 214(b) of the Hawaiian Homes Commission Act, 1920; and

(G) Obligations secured by second mortgages on improved real estate for which the mortgagor procures a second mortgage on the improved real estate for the purpose of acquiring the leaseholder's fee simple interest in the improved real estate; provided that any prior mortgage does not contain provisions [which] that might jeopardize the security position of the retirement system or the borrower's ability to repay the mortgage loan.

The board of trustees may retain such real estate, including leasehold interests therein, as it may acquire by foreclosure of mortgages or in enforcement of security, or as may be conveyed to it in satisfaction of debts previously contracted; provided that all such real estate, other than leasehold interests, shall be sold within five years after acquiring the same, subject to extension by the governor for additional periods not exceeding five years each, and that all such leasehold interests shall be sold within one year after acquiring the same, subject to extension by the governor for additional periods not exceeding one year each;

(2) Government obligations, etc. Obligations of any of the following classes:

(A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on such obligations are payable in currency of the United States; or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;

(B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and

(C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;

(3) Corporate obligations. [Investments may be made in below] Below investment grade or nonrated debt instruments, foreign or domestic, in accordance with investment guidelines adopted by the board of trustees;

(4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country;

(5) Obligations eligible by law for purchase in the open market by federal reserve banks;

(6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;

(7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth[,] at the time the investment is made[,] at least fifteen per cent more than the amount of the respective obligations;

(8) Insurance company obligations. Contracts and agreements supplemental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein;

(9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board of trustees, it is prudent to invest funds of the system. For purposes of this paragraph, "real property" includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved

or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies, group or unit trusts, limited partnerships, limited liability companies, investment trusts, title-holding corporations recognized under section [501(c)(2) or section 501(c)(23)] 501(c) of the Internal Revenue Code of 1986, as amended, similar entities that would protect the system's interest, and other pooled funds invested on behalf of the system by investment managers retained by the system;

(10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs (including paragraph (4)); and

(11) Private placements. Investments in institutional blind pool limited partnerships or direct investments [which] that make private debt and equity investments in privately held companies."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 29, 1999.)

ACT 169 H.B. NO. 171

A Bill for an Act Relating to Health Care Decisions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
UNIFORM HEALTH-CARE DECISIONS ACT (MODIFIED)

§ **-1 Short title.** This chapter may be cited as the Uniform Health-Care Decisions Act (Modified).

§ **-2 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Advance health-care directive" means an individual instruction or a power of attorney for health care.

"Agent" means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

"Best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment and shall include:

(1) The effect of the treatment on the physical, emotional, and cognitive functions of the patient;
(2) The degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;
(3) The degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;
(4) The effect of the treatment on the life expectancy of the patient;
(5) The prognosis of the patient for recovery, with and without the treatment;
(6) The risks, side effects, and benefits of the treatment or the withholding of treatment; and
(7) The religious beliefs and basic values of the individual receiving treatment, to the extent that these may assist the surrogate decision-maker in determining benefits and burdens.

"Capacity" means an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision.

"Emancipated minor" means a person under eighteen years of age who is totally self-supporting.

"Guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

"Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition, including:

(1) Selection and discharge of health-care providers and institutions;
(2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
(3) Direction to provide, withhold, or withdraw artificial nutrition and hydration; provided that withholding or withdrawing artificial nutrition or hydration is in accord with generally accepted health care standards applicable to health care providers or institutions.

"Health-care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care.

"Health-care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

"Health-care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

"Individual instruction" means an individual's direction concerning a health-care decision for the individual.

"Interested persons" means the patient's spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the patient, an adult sibling or adult grandchild of the patient, or any adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Physician" means an individual authorized to practice medicine or osteopathy under chapter 453 or 460.

''Power of attorney for health care'' means the designation of an agent to make health-care decisions for the individual granting the power.

''Primary physician'' means a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

''Reasonably available'' means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a patient's health care needs, and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

''State'' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

''Supervising health-care provider'' means the primary physician or the physician's designee, or the health-care provider or the provider's designee who has undertaken primary responsibility for an individual's health care.

''Surrogate'' means an individual, other than a patient's agent or guardian, authorized under this chapter to make a health-care decision for the patient.

§ **-3 Advance health-care directives.** (a) An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(b) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of the health-care institution at which the principal is receiving care. The power shall be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

(1) Signed by at least two individuals, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgement of the signature of the instrument; or

(2) Acknowledged before a notary public at any place within this State.

(c) A witness for a power of attorney for health care shall not be:

(1) A health-care provider;

(2) An employee of a health-care provider or facility; or

(3) The agent.

(d) At least one of the individuals used as a witness for a power of attorney for health care shall be someone who is neither:

(1) Related to the principal by blood, marriage, or adoption; nor

(2) Entitled to any portion of the estate of the principal upon the principal's death under any will or codicil thereto of the principal existing at the time of execution of the power of attorney for health care or by operation of law then existing.

(e) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

(f) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, shall be made by the primary physician.

(g) An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(h) A health-care decision made by an agent for a principal shall be effective without judicial approval.

(i) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(j) An advance health-care directive shall be valid for purposes of this chapter if it complies with this chapter, or if it was executed in compliance with the laws of the state where it was executed.

§ -4 **Revocation of advance health-care directive.** (a) An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

(b) An individual may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(c) A health-care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

(d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

(e) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

§ -5 **Health-care decisions; surrogates.** (a) A patient may designate or disqualify any individual to act as a surrogate by personally informing the supervising health-care provider. In the absence of such a designation, or if the designee is not reasonably available, a surrogate may be appointed to make a health-care decision for the patient.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available. Upon a determination that a patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the primary physician or the physician's designee shall make reasonable efforts to notify the patient of the patient's lack of capacity. The primary physician, or the physician's designee, shall make reasonable efforts to locate as many interested persons as practicable, and the primary physician may rely on such individuals to notify other family members or interested persons.

(c) Upon locating interested persons, the primary physician, or the physician's designee, shall inform such persons of the patient's lack of decisional capacity and that a surrogate decision-maker should be selected for the patient.

(d) Interested persons shall make reasonable efforts to reach a consensus as to who among them shall make health-care decisions on behalf of the patient. The person selected to act as the patient's surrogate should be the person who has a close relationship with the patient and who is the most likely to be currently informed of the patient's wishes regarding health-care decisions. If any of the interested persons disagrees with the selection or the decision of the surrogate, or, if after reasonable

efforts the interested persons are unable to reach a consensus as to who should act as the surrogate decision-maker, then any of the interested persons may seek guardianship of the patient by initiating guardianship proceedings pursuant to chapter 551. Only interested persons involved in the discussions to choose a surrogate may initiate such proceedings with regard to the patient.

(e) If any interested person, the guardian, or primary physician believes the patient has regained decisional capacity, the primary physician shall reexamine the patient and determine whether or not the patient has regained decisional capacity and shall enter a decision and the basis for such decision into the patient's medical record and shall notify the patient, the surrogate decision-maker, and the person who initiated the redetermination of decisional capacity.

(f) A surrogate who has been designated by the patient may make health-care decisions for the patient that the patient could make on the patient's own behalf.

(g) A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

The surrogate who has not been designated by the patient shall make health-care decisions for the patient based on the wishes of the patient, or, if the wishes of the patient are unknown or unclear, on the patient's best interest.

The decision of a surrogate who has not been designated by the patient regarding whether life-sustaining procedures should be provided, withheld, or withdrawn shall not be based, in whole or in part, on either a patient's preexisting, long-term mental or physical disability, or a patient's economic status. A surrogate who has not been designated by the patient shall inform the patient, to the extent possible, of the proposed procedure and the fact that someone else is authorized to make a decision regarding that procedure.

(h) A health-care decision made by a surrogate for a patient is effective without judicial approval.

(i) A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority.

§ **-6 Decisions by guardian.** (a) A guardian shall comply with the ward's individual instructions and shall not revoke the ward's pre-incapacity advance health-care directive unless expressly authorized by a court.

(b) Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.

(c) A health-care decision made by a guardian for the ward is effective without judicial approval.

§ **-7 Obligations of health-care provider.** (a) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

(c) A supervising health-care provider who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(d) Except as provided in subsections (e) and (f), a health-care provider or institution providing care to a patient shall:

(1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(2) Comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(e) A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(f) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(g) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1) Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(2) Provide continuing care to the patient until a transfer can be effected; and

(3) Unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision.

(h) A health-care provider or institution may not require or prohibit the execution or revocation of advance health-care directive as a condition for providing health care.

§ **-8 Health-care information.** Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health-care information.

§ **-9 Immunities.** (a) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution shall not be subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) Complying with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;

(2) Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority; or

(3) Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated.

(b) An individual acting as agent, guardian, or surrogate under this chapter shall not be subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

§ -10 **Statutory damages.** (a) A health-care provider or institution that intentionally violates this chapter shall be subject to liability to the individual or the individual's estate for damages of $500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health-care directive, shall be subject to liability to that individual for damages of $2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

§ -11 **Capacity.** (a) This chapter does not affect the right of an individual to make health-care decisions while having capacity to do so.

(b) An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive, and to designate or disqualify a surrogate.

§ -12 **Effect of copy.** A copy of a written advance health-care directive, revocation of an advance health-care directive, or designation or disqualification of a surrogate has the same effect as the original.

§ -13 **Effect of this chapter.** (a) This chapter shall not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

(b) Death resulting from the withholding or withdrawal of health care in accordance with this chapter shall not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(c) This chapter shall not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this State.

(d) This chapter shall not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(e) This chapter shall not authorize an agent or surrogate to consent to the admission of an individual to a psychiatric facility as defined in chapter 334, unless the individual's written advance health-care directive expressly so provides.

(f) This chapter shall not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a psychiatric facility.

(g) This chapter shall not apply to a patient diagnosed as pregnant by the attending physician.

§ -14 **Judicial relief.** On petition of a patient, the patient's agent, guardian, or surrogate, or a health-care provider or institution involved with the patient's care, any court of competent jurisdiction may enjoin or direct a health-care decision

or order other equitable relief. A proceeding under this section shall be governed by part 3 of article V of chapter 560.

§ -15 **Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ -16 **Optional form.** The following sample form may be used to create an advance health-care directive. This form may be duplicated. This form may be modified to suit the needs of the person, or a completely different form may be used that contains the substance of the following form.

"ADVANCE HEALTH-CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health-care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;
(b) Select or discharge health-care providers and institutions;
(c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
(d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief medication. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care, and to any health-care agents you have named. You should talk to the person you have

named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1
DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

_____
(name of individual you choose as agent)

_____
(address) (city) (state) (zip code)

_____
(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

_____
(name of individual you choose as first alternate agent)

_____
(address) (city) (state) (zip code)

_____
(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

_____
(name of individual you choose as second alternate agent)

_____
(address) (city) (state) (zip code)

_____
(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive, except as I state here:

_____
_____
_____
(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [ ], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2
INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: (Check only one box.)

[ ] (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

[ ] (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box [ ], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: If I mark this box [ ], I direct that treatment to alleviate pain or discomfort should be provided to me even if it hastens my death.

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

_____

_____

(Add additional sheets if needed.)

PART 3
DONATION OF ORGANS AT DEATH
(OPTIONAL)

(10) Upon my death: (mark applicable box)

[ ] (a) I give any needed organs, tissues, or parts,
OR

[ ] (b) I give the following organs, tissues, or parts only

_____

[ ] (c) My gift is for the following purposes (strike any of the following you do not want)

(i) Transplant
(ii) Therapy
(iii) Research
(iv) Education

PART 4
PRIMARY PHYSICIAN
(OPTIONAL)

(11) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

(date) (sign your name)

(address) (print your name)

(city) (state)

(14) WITNESSES: This power of attorney will not be valid for making health-care decisions unless it is either (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(date) (signature of witness)

(address) (printed name of witness)

(city) (state)

Witness

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the

principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility.

(date) (signature of witness)

(address) (printed name of witness)

(city) (state)

ALTERNATIVE NO. 2

State of Hawaii
County of _____
On this ____ day of _____, in the year ____, before me, _____ (insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.
Notary Seal

(Signature of Notary Public)''

SECTION 2. Section 551D-2.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§551D-2.5[]] Durable power of attorney for health care decisions.** [(a)] A competent person who has attained the age of majority may execute a durable power of attorney authorizing an agent to make any lawful health care decisions [that could have been made by the principal at the time of election.] pursuant to chapter ____.

[(b) The durable power of attorney made pursuant to this section:

(1) Shall be in writing;

(2) Shall be signed by the principal, or by another person in the principal's presence and at the principal's expressed direction;

(3) Shall be dated;

(4) Shall be signed in the presence of two or more witnesses who:

(A) Are at least eighteen years of age;

(B) Are not related to the principal by blood, marriage, or adoption; and

(C) Are not, at the time that the durable power of attorney is executed, attending physicians, employees of an attending physician, or employees of a health care facility in which the principal is a patient; and

(5) Shall have all signatures notarized at the same time.

(c) A durable power of attorney for health care decisions shall be presumed not to grant authority to decide that the principal's life should not be prolonged through surgery, resuscitation, life sustaining medicine or procedures or the provision of nutrition or hydration, unless such authority is explicitly stated.

(d) A durable power of attorney for health care decisions shall only be effective during the period of incapacity of the principal as determined by a licensed physician.

(e) No person shall serve as both the treating physician and attorney-in-fact for any principal for matters relating to health care decisions.

(f) A durable power of attorney for health care decisions executed prior to June 12, 1992, that substantially complies with the requirements of this chapter shall be considered valid provided that the powers relating to the health care decisions

granted in the power of attorney have not been previously revoked by the principal or otherwise terminated.]''

SECTION 3. Section 551D-2.6, Hawaii Revised Statutes, is repealed.

SECTION 4. Chapter 327D, Hawaii Revised Statutes, is repealed.

SECTION 5. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 6. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 170 S.B. NO. 947

A Bill for an Act Relating to Telemarketing Fraud.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

''CHAPTER
TELEMARKETING FRAUD PREVENTION ACT

§ -1 Definitions. Whenever used in this chapter, unless the context requires otherwise:

''Consumer'' or ''purchaser'' means a person who is, or may be, required to pay for goods or services offered by a seller or telephone solicitor through telemarketing and includes but is not limited to a consumer as defined in section 480-1.

''Express verifiable authorization'' means express written authorization by the consumer, including but not limited to the consumer's signature on a negotiable instrument, that specifically authorizes the seller or telephone solicitor to obtain payment from a consumer's checking, savings, or bankcard account.

''Goods or services'' means any real property or any tangible or intangible personal property or services of any kind provided or offered to a consumer.

''Investment opportunity'' means anything tangible or intangible, that is offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

''Material'' means any factor likely to affect a person's choice of, or conduct regarding, goods or services.

''Outbound telephone call'' means a telephone call initiated by a seller or telephone solicitor to induce the purchase of goods or services.

''Payment'' means anything of value, including any interest, benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.

''Prize'' means anything offered or purportedly offered and given or purportedly given to a consumer by chance.

''Prize promotion'' means a sweepstakes or other game of chance or an oral or written representation that a consumer has won, has been selected to receive, or is eligible to receive a prize or purported prize.

''Recovery service'' means any business or other practice in which a person represents or implies that, for a fee, any amount a consumer has paid out to a seller or telephone solicitor may be recovered.

''Seller'' means any person, who, in connection with a telemarketing transaction, solicits funds or contributions, or arranges for a telephone solicitor to solicit funds or contributions, or provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

''Telemarketing'' means a plan, program, or campaign, including a prize promotion or investment opportunity, that is conducted to induce the purchase of goods or services or to solicit funds or contributions by use of one or more telephones and that involves more than one telephone call.

''Telephone solicitor'' means any person who in connection with telemarketing, initiates or receives telephone calls to or from a consumer, where either or both parties to the telephone call are located in this State.

§ **-2 Unfair or deceptive acts or practices prohibited.** (a) It is an unfair or deceptive act or practice and a violation of this chapter for any seller or telephone solicitor to:

(1) Fail to commence, within the first minute of an outbound telephone call, and complete within the first three minutes of the outbound call, and before payment is requested and prior to any solicitation, disclosure of the following:
   (A) The true purpose of the telephone call;
   (B) The telephone solicitor's name and the company or entity on whose behalf the solicitation is being made; and
   (C) The goods or services being offered;

(2) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, the following information:
   (A) Total purchase costs to the consumer of the goods or services to be received;
   (B) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of any offer;
   (C) Any material term or condition of the seller's refund, cancellation, or exchange policy, including, if applicable, that no such policies exist;
   (D) All material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the ''no purchase'' method of entering the contest;
   (E) Any material aspect of an investment opportunity being offered, including but not limited to risk, liquidity, earnings potential, market value, and profitability; and
   (F) The quantity, and any material aspect of the quality or basic characteristics of any goods or services offered;

(3) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered;
(4) Represent that the telephone solicitor or seller is registered as a telephone solicitor in the State or has in any way received an endorsement or approval by any governmental agency of the State;
(5) Make a false or misleading statement with the purpose of inducing a consumer to pay for any goods or services;
(6) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization; provided that no express verifiable authorization is required if the seller adopts and complies with a policy that:
(A) Affords the consumer at least seven days after the receipt of goods or services to review goods or services and return undamaged or unused goods or submit a cancellation of services notice;
(B) Requires the seller to process the full refund within thirty days after receipt of returned merchandise or the cancellation of services notice from the consumer; and
(C) Requires the disclosure of the seller's return and refund policy to the consumer, orally by telephone, and in writing with any advertising or promotional material, and with delivery of the goods or services;
(7) Fail to include on the express verifiable authorization in a clear and conspicuous manner, the following language:
"YOU ARE NOT OBLIGATED TO MAKE ANY PAYMENT UNLESS YOU SIGN THIS CONFIRMATION AND RETURN IT TO THE SELLER";
(8) Procure the services of any professional delivery, courier, or other pick-up service to obtain immediate receipt or possession of a consumer's payment;
(9) Offer to consumers in the State any prize promotion, in which a purchase or payment is necessary to obtain the prize; or
(10) Fail to comply with the recordkeeping requirements of this chapter.

(b) It is a violation of this chapter for any person to assist, support, or provide substantial assistance to any seller or telephone solicitor, where that person knows or should have known that the seller or telephone solicitor is engaged in any unlawful or deceptive practice defined within this chapter.

(c) Engaging in any other unfair or deceptive conduct that will create a likelihood of confusion or misunderstanding is a violation of this chapter.

§ **-3 Abusive telemarketing acts or practices.** It is an abusive telemarketing act or practice and a violation of this chapter for any seller or telephone solicitor to engage in the following conduct:
(1) Threaten, intimidate, or use profane or obscene language;
(2) Request a fee to remove derogatory information from or improve a consumer's credit history or credit record until:
(A) The time frame in which the seller or telephone solicitor has represented that all of the goods or services will be provided to that consumer has expired; and
(B) The seller or telephone solicitor has provided the consumer with documentation in the form of a credit report from a credit reporting agency demonstrating that the promised results have been achieved, the report having been issued more than six months

after the results were achieved. Nothing in this chapter should be construed to affect the requirement of the Fair Credit Reporting Act, 15 U.S.C. 1681b, that a consumer report may only be obtained for a specified permissible purpose;

(3) Request or receive payment from a consumer to recover or otherwise aid in the return of money or any other item lost by the consumer in a telemarketing transaction, until seven business days after the money or other item is delivered to the consumer;

(4) Request or actually receive payment of any fee in advance of obtaining a loan or other extension of credit when a high likelihood of success has been represented to the consumer by the seller or telephone solicitor;

(5) Cause the telephone to ring more than ten times in an outbound telephone call;

(6) Engage any consumer repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive, or harassing;

(7) Initiate an outbound telephone call to a consumer, when the person has stated previously that the consumer does not wish to receive telephone calls from that seller or telephone solicitor; provided that the seller or telephone solicitor will not be liable for violating this paragraph if:

(A) It has established and implemented written procedures to comply with this paragraph, which procedures shall meet the minimum standards set forth in 47 C.F.R. 64.1200(e)(2);

(B) It has trained its personnel in the procedures established pursuant to subparagraph (A);

(C) The seller, or telephone solicitor acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted in compliance with this paragraph; and

(D) The call is the result of error.

(8) Initiate an outbound telephone call to a consumer's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the location of the consumer called.

§ -4 **Recordkeeping.** Every telephone solicitor shall keep true and accurate records of all telemarketing activities initiated in this State or directed to consumers located in this State. Upon demand, the records shall be made available to the department of commerce and consumer affairs, the attorney general, and any other governmental entity with authority to enforce this chapter. These records shall be retained for a period of two years after the date of any outbound telephone call initiated from, directed into, or within this State. The records shall include but are not limited to the following information:

(1) The location of the telephone solicitor and seller and the street addresses of any locations from which the outbound telephone calls originated;

(2) Copies of any injunction, temporary restraining order, judgment, consent judgment, or assurance of voluntary compliance in any civil or administrative action, including any pending action, involving a violation or alleged violation by telephone solicitor or the seller of any state or federal telemarketing law;

(3) The name, any fictitious name used, last known home address, telephone number, and job title of all telephone solicitors, who place or placed calls on behalf of a seller or who participate in or are responsible for the management of the business of the telephone solicitor; however, if the seller or telephone solicitor permits fictitious names to be used by employees or agents, each fictitious name shall be traceable to only one

specific telephone solicitor, employee or agent. Where one or more telephone solicitors is employed by or otherwise acting on behalf of a seller, the reporting requirements of this chapter may be met by the seller on behalf of itself and its telephone solicitors, but only to the extent the records comply with the requirements of this chapter;

(4) Copies of all substantially different scripts, outlines, or presentation materials the seller requires a telephone solicitor to use when soliciting, as well as of all information to be provided by a telephone solicitor to a consumer in connection with any telemarketing;

(5) All written consents to utilize a name or names of any person, as defined in section 1-19, in any endorsement;

(6) Materials that substantiate any claims about the performance, efficacy, nature, or characteristics of health, nutrition, or diet related goods or services that are the subject of telemarketing;

(7) A copy of the refund, cancellation, exchange, or repurchase policies for any goods or services offered by a seller or telephone solicitor, unless the seller or telephone solicitor offers and provides an unconditional satisfaction guaranteed policy and provides a full refund for returned goods or cancelled services;

(8) Copies of all written confirmations of telemarketing transactions;

(9) Copies of all express verifiable authorizations and signed order confirmations;

(10) Copies of any training instructions, handbooks, or other guidelines distributed by telephone solicitors to their staff or by sellers to their telephone solicitors, employees, or agents;

(11) Procedures for maintaining a list of persons who do not wish to receive outbound telephone calls made by or on behalf of the seller or telephone solicitor, which procedures shall meet the minimum standards set forth in 47 C.F.R. section 64.1200(e)(2), as well as the do not call lists maintained pursuant to those procedures; and

(12) Copies of written contracts and agreements between the telephone solicitor and the seller.

§ **-5 Exemptions.** This chapter shall not apply to:

(1) A person who initiates telephone calls to a residence for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;

(2) A securities broker-dealer, salesperson, investment advisor, or investment advisor representative who is registered with this State to sell securities or who is authorized to sell securities in this State pursuant to federal securities laws, when soliciting over the telephone within the scope of the person's registration;

(3) A financial institution that is authorized to accept deposits under its chartering or licensing authority where such deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, such as a bank, savings bank, savings and loan association, depository financial services loan company, or credit union, or a nondepository financial services loan company that is licensed or authorized to conduct business in this State by the commissioner of financial institutions, or an affiliate or subsidiary of a financial institution as defined in chapter 412;

(4) A person or organization that is licensed or authorized to conduct business in this State by the commissioner of insurance including but

not limited to an insurance company and its employees, while engaged in the business of selling or advertising the sale of insurance products or services;

(5) A college or university accredited by an accrediting organization recognized by the United States Department of Education;

(6) A person who publishes a catalog of at least fifteen pages, four times a year, with a circulation of at least one hundred thousand, where the catalog includes clear disclosure of sale prices, shipping, handling, and other charges;

(7) A political subdivision or instrumentality of the United States, or any state of the United States;

(8) The sale of goods or services by telecommunications or landline (i.e. cable) or wireless video service providers, for which the terms and conditions of the offering, production, or sale are regulated by the public utilities commission or the Federal Communications Commission, or pursuant to chapter 440G, including the sale of goods or services by affiliates of these telecommunications or video service providers; provided that nothing herein shall be construed to preclude or preempt actions brought under any other laws including chapter 480;

(9) A real estate broker or salesperson who is licensed by this State to sell real estate, when soliciting within the scope of the license; or

(10) A travel agency that is registered with this State, when engaging in the business of selling or advertising the sale of travel services.

§ **-6 Unfair or deceptive act or practice.** Any person who violates this chapter shall be deemed to have engaged in an unfair method of competition or unfair and deceptive act or practice in the conduct or any trade or commerce within the meaning of section 480-2.

§ **-7 Other relief available.** The relief provided in this chapter is in addition to remedies otherwise available for the same conduct under the common law or other state or federal statutes or rules.

§ **-8 Contracts voidable.** A contract or agreement made as a result of telemarketing activity that violates this chapter is voidable by the consumer for any reason at any time and shall not be enforced against the consumer and any debt arising therefrom shall not be reported to a credit reporting agency."

SECTION 2. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

ACT 171 H.B. NO. 252

A Bill for an Act Relating to Degree Granting Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 446E, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§446E- **Advisory board.** The state post-secondary education commission, as established by chapter 305H, shall serve as a resource to the director as needed regarding the requirements of this chapter.

§446E- **Exceptions.** This chapter shall not apply to the types of schools and courses of instruction that include:

(1) Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees;
(2) Apprentice or other training programs provided by labor unions to union members or union applicants for membership;
(3) Courses of instruction that do not lead to the conferring of a degree;
(4) Seminars, refresher courses, and programs of instruction sponsored by professional, business, or farming organizations or associations for their members or employees of their members;
(5) Courses of instruction conducted by a public school district or a combination of public school districts;
(6) Colleges and universities that grant degrees pursuant to chapters 304 and 305;
(7) Entities that are established under the jurisdiction of the board of regents of the University of Hawaii;
(8) Schools, courses of instruction, or courses of training that are offered by a vendor to the purchaser or prospective purchaser of the vendor's product when the objective of the school or course is to enable the purchaser or the purchaser's employees to gain skills and knowledge which enable the purchaser to use the product;
(9) Schools and educational programs conducted by religious organizations solely for the religious instruction of their members;
(10) Nondegree granting post-secondary educational institutions licensed by the department of education or the real estate commission; and
(11) Schools that are accredited by an agency or organization approved or recognized by the United States Department of Education or a successor agency, except as provided for in section 446E-5(b) and (c).

§446E- **Powers and duties of the director.** The director may adopt rules in accordance with chapter 91 to carry out the functions, powers, and duties set forth in this chapter."

SECTION 2. Section 446E-1, Hawaii Revised Statutes, is amended to read as follows:

"[[]§446E-1[]] **Definitions.** As used in this chapter:

"Degree" means a post-secondary credential, earned or honorary, conferring on the recipient the title or designation of "associate", "bachelor", "baccalaureate", "master", "doctor", or "doctorate", or any designation, mark, appellation, series of letters or words, or other symbol which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic or professional program of study beyond the secondary school level.

"Degree granting institution" means a school, academy, institute, junior college, college, university, [or person or entity of whatever kind which furnishes or offers to furnish instruction leading toward or prerequisite to an academic or professional degree beyond the secondary school level.] agency, individual, partnership, company, firm, society, trust, association, corporation, or any combination thereof that meets the following criteria:

(1) Provides a post-secondary instructional program or course leading to a degree;

(2) Uses in its name the term "college", "academy", "institute", "institution", or "university" or a similar term which implies that the organization or person is primarily engaged in the education of students at the post-secondary level; and

(3) Charges a fee for its services.

"Director" means the director of commerce and consumer affairs.

"Employee" means a person who is hired on an hourly or salaried basis for twenty or more hours per week.

"Office" means space within a structure that is leased, subleased, rented, or owned by the unaccredited institution or one or more of its officers or directors for the exclusive use by the unaccredited institution, as evidenced by a written lease agreement, sublease agreement, rental agreement, or conveyance document, and shall not include an arrangement for mail forwarding services or mailbox rental.

"Presence" means offering courses, programs, or degrees or maintaining a campus, or an administrative, corporate, or other address in this State.

"Student" means a person who enrolls in or seeks to enroll in a course of instruction offered or conducted by an unaccredited institution.

"Unaccredited institution" means a degree granting institution [which has not been] that is not accredited or [provisionally accredited] a candidate for accreditation by at least one nationally recognized accrediting agency [or association which] that is listed by the United States Secretary of Education."

SECTION 3. Section 446E-2, Hawaii Revised Statutes, is amended to read as follows:

"**§446E-2 Disclosures.** (a) Any unaccredited institution shall disclose in all catalogs, promotional materials, and [written] contracts for instruction, the fact that the institution is not [fully] accredited by any nationally recognized accrediting agency [or association] listed by the United States Secretary of Education. [The unaccredited institution shall disclose whether it is a provisionally accredited, or is a candidate for accreditation. The accrediting agency or association shall be identified.] The disclosure shall be made in [boldface print and] a type size as large or larger than any other text in the catalog, promotional material, or contract for instruction, excluding the name of the unaccredited institution, and shall be presented in a manner reasonably calculated to draw the attention of the reader [and]. If the unaccredited institution includes in its catalogs, promotional materials, or contracts for instruction any other information relating in any manner to accreditation, or to accreditation by an agency not nationally recognized by the United States Secretary of Education, the disclosure required by this subsection shall be repeated on every page on which the information appears. Where the information is presented electronically, the disclosure shall be made directly preceding or following the information. The disclosure shall read [substantially] as follows:

(Name of Degree Granting Institution) IS NOT ACCREDITED BY [A RECOGNIZED] AN ACCREDITING AGENCY [OR ASSOCIATION] RECOGNIZED BY THE UNITED STATES SECRETARY OF EDUCATION.

Note: In the United States, many licensing authorities require accredited degrees as the basis for eligibility for licensing. In some cases, accredited colleges may not accept for transfer courses and degrees completed at unaccredited colleges, and some employers may require an accredited degree as a basis for eligibility for employment.

(b) Every unaccredited institution subject to this chapter shall[, in accordance with the rules prescribed by the department,] keep true and accurate records of student enrollment, courses, fees, and matriculation rates. These records shall be retained for five years. Upon demand, these records, and any other information requested or subpoenaed by the director, shall be made available to the [department for inspection. Such records shall be retained for a period of five years.] director."

SECTION 4. Section 446E-3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§446E-3[]] Sanction.** [Failure by any unaccredited institution to make the disclosure required by this section shall constitute an unfair or deceptive act or practice under section 480-2.] Any person who violates this chapter shall be deemed to have engaged in an unfair or deceptive act or practice pursuant to section 480-2."

SECTION 5. Section 446E-4, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§446E-4[] Registration.] Service of process.** (a) Any unaccredited institution with a presence in the State shall [register with the department of commerce and consumer affairs in a manner established by rules adopted pursuant to chapter 91. The department may request, as part of the registration process, copies of any contracts, brochures, catalogues, or similar materials which are distributed to prospective students.] designate and continuously maintain an agent in this State authorized to accept service of process on behalf of the institution and shall transmit to the director the name, address, and telephone number of the agent so designated in a manner prescribed by the director. The designated agent shall be an agent of the unaccredited institution for service of any process, notice, or demand required or permitted by law to be served upon the unaccredited institution.

(b) If an unaccredited institution fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent's address, service of process may be made upon the unaccredited institution by registered or certified mail, return receipt requested, addressed to the unaccredited institution at the most recent address listed in the records of the director.

(c) Service by registered or certified mail shall be effected under subsection (b) at the earliest of:

(1) The date the unaccredited institution receives the process, notice, or demand;

(2) The date shown on the return receipt, if signed on behalf of the unaccredited institution; or

(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(d) This section shall not affect the right to serve process, notice, or demand in any other manner provided by law."

SECTION 6. Section 446E-5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§446E-5[]] Prohibited practices.** (a) No unaccredited institution shall [refer to registration under this chapter, compliance with the requirements of this chapter, or to any agency or employee of the State in a manner which suggests] indicate or suggest that the State licenses, approves, or regulates its operations. Acceptance by the director of any documents from an unaccredited institution shall

not be construed as evidence that the director has determined the adequacy of any filing.

(b) Any institution that is not accredited by the American Bar Association shall not issue a juris doctor degree (J.D.), a master of laws degree (LL.M.), or any equivalent or comparable degree.

(c) Any institution that is not accredited by the Liaison Committee on Medical Education shall not issue a doctor of medicine degree (M.D.), or any equivalent or comparable degree.

(d) No unaccredited institution shall issue degrees unless the institution has an office located in Hawaii, at least one employee who resides in Hawaii, and at least twenty-five enrolled students in Hawaii, in each academic year of its operation for the purpose of performing course requirements that are part of the students' educational curriculum.

(e) No unaccredited institution that operates in or from the State or has a presence in this State shall accept or receive any tuition payment or other fee from or on behalf of a student unless the institution complies with all of the requirements of this chapter.

(f) No unaccredited institution shall disclose in any catalog, promotional material or written contract for instruction that it has applied for future accreditation."

SECTION 7. Notwithstanding section 446E-5(d)[1], Hawaii Revised Statutes, an unaccredited institution may issue degrees only for a period of no more than three consecutive years from the effective date of this Act; provided that:

(1) The institution has, on the effective date of this Act and for as long thereafter as it issues degrees pursuant to this section of the Act, an office located in Hawaii, and at least one employee who resides in Hawaii; and

(2) This period may be extended by two additional consecutive years if the institution has applied for and has been granted eligibility for candidacy or accreditation by an agency approved or recognized by the United States Department of Education or a successor agency prior to the expiration of the initial three-year period. Thereafter, the unaccredited institution shall be subject to section 446E-5(d)[1], Hawaii Revised Statutes.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 9. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

Notes

1. "446E-5(d)" substituted for "445E-5(d)".
2. Edited pursuant to HRS §23G-16.5.

ACT 172 H.B. NO. 266

A Bill for an Act Relating to New Mothers Breastfeeding Promotion and Protection Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that women with infants and toddlers are the fastest growing segment of today's labor force, with at least fifty per cent of pregnant women who are employed returning to work by the time their children are three months old.

The legislature further finds that the American Academy of Pediatrics recommends that women breastfeed for at least the first twelve months of a child's life and urges that arrangements be made to provide for expressing breastmilk if the mother and child are separated.

The legislature further finds that women who wish to continue breastfeeding after returning to work have relatively few needs, such as the availability of suitable, dependable, and efficient breast pumps; a clean, convenient, safe, private, and comfortable location to express milk at the worksite; the opportunity to pump their breasts frequently enough to maintain their milk supply; and an adequate place to temporarily store their expressed milk.

The purpose of this Act is to promote breastfeeding by:

(1) Disallowing an employer to prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement;
(2) Prohibiting discriminatory employment practices against women who breastfeed or express milk at the workplace; and
(3) Requiring the Hawaii civil rights commission to compile and publish information on workplace discrimination against lactating employees.

SECTION 2. Section 378,[1] Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§378- Breastfeeding.** No employer shall prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement."

SECTION 3. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

"**§378-2 Discriminatory practices made unlawful; offenses defined.** It shall be an unlawful discriminatory practice:

(1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:
    (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
    (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
    (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or

publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;

(D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or

(E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be [less] younger than sixteen years of age;

(2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;

(3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;

(4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;

(5) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52; [or]

(6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association[.]; or

(7) For any employer or labor organization to refuse to hire or employ, or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because an employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast."

SECTION 4. The Hawaii civil rights commission shall accumulate, compile, and publish data concerning incidences of discrimination involving breastfeeding or expressing breastmilk in the workplace. The commission shall submit a report to the legislature on its findings no later than twenty days prior to the convening of the 2000 legislature.

SECTION 5. Nothing in this Act prohibits employers from establishing internal rules and guidelines for employees who may wish to breastfeed or express breastmilk in the workplace.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 7. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 173

S.B. NO. 1177

A Bill for an Act Relating to the General Excise Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-4, Hawaii Revised Statutes, is amended to read as follows:

"§237-4 "Wholesaler", "jobber", defined. (a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:

(1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;

(2) Sales to a licensed manufacturer of [material] materials or commodities [which] that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and [which] that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;

(3) Sales to a licensed producer or cooperative association of materials or commodities [which] that are to be incorporated by the producer or by the cooperative association into a finished or saleable product [which] that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities [which] that are sold by the producer or by the cooperative association;

(4) Sales to a licensed contractor, of [material] materials or commodities [which] that are to be incorporated by the contractor into the finished work or project required by the contract and [which] that will remain in such finished work or project in such form as to be perceptible to the senses;

(5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to [such] a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or [to be incorporated in] for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a

sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

(6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);

(7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);

(8) Sales of tangible personal property to a licensed person engaged in [the] a service business[;] or calling; provided that:
   (A) [the] The property is not consumed or incidental to the performance of the services;
   (B) [there] There is a resale of the article at the retail rate of four per cent; and
   (C) [the] The resale of the article is separately charged or billed by the person rendering the services;

(9) Sales to a licensed leasing company of capital goods [which] that are thereafter leased as a service to others. Capital goods means goods which have a depreciable life and which are purchased by the leasing company for lease to its customers[.];

(10) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;

(11) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller.

(b) If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized

to render and rendering a general distribution service [which] that buys and maintains at the person's place of business a stock or lines of merchandise [which] that the person distributes; and [which,] that the person, through salespersons, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter."

SECTION 2. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

"**§237-13 Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

(1) Tax on manufacturers.

(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared[,] for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.

(B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.

(C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside [of] the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department [of taxation] shall determine the basis for assessment, as provided by this paragraph, as follows:

(i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products[.];

(ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values[.];

(iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce[.]; and

(iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.

(2) Tax on business of selling tangible personal property; producing.

(A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).

(B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.

(C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for

delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.

(D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; except that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.

(E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.

(F) The department, by rule, may [provide] require that a seller [may] take from the purchaser of tangible personal property a certificate, in a form [as] prescribed by the department [shall prescribe], certifying that the sale is a sale at wholesale[. If the certificate is so provided for by rule of the department:]; provided that:

(i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not at wholesale, the amount of the additional tax which by reason thereof is imposed upon the seller; and

(ii) The absence of a certificate, unless the sales of the business are exclusively at wholesale, in itself shall give rise to the presumption that the sale is not at wholesale.

(3) Tax upon contractors.

(A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.

(B) In computing the tax levied under this paragraph or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:

(i) Another taxpayer who is a contractor, as defined in section 237-6;

(ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or

(iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

but any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

(C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:

(i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and

(ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.

(D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements [it was,] the person intended, and for the period of at least one year after completion of the building, structure, or other improvements[, it continued to be the person's purpose] the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding

the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph [(10);] (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

(4) Tax upon theaters, amusements, radio broadcasting stations, etc. Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business.

(5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.

(6) Tax on service business. Upon every person engaging or continuing within the State in any service business, [or] calling, or professional services not otherwise specifically taxed under this chapter, there is [likewise hereby] levied, [and] shall be assessed, and shall be collected a tax equal to four per cent of the gross income of the business; provided that [where]:

(A) Where any person engaging or continuing within the State in any service business, [or] calling, or professional services renders those services upon the order of or at the request of another taxpayer who is engaged in the service business, calling, or professional services and who, in fact, acts as or [acts] in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent; and [provided that where]

(B) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.

(7) Tax on insurance solicitors and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431,

there is hereby levied and shall be assessed and collected a tax equal to .15 per cent of the commissions due to that activity.

[(8) Professions. Upon every person engaging or continuing within the State in the practice of a profession, including those expounding the religious doctrines of any church, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income on the practice or exposition.

(9)] (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received[,]; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

[(10)] (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 1 shall apply to gross receipts received after June 30, 1999.

(Approved July 1, 1999.)

ACT 174 S.B. NO. 1261

A Bill for an Act Relating to Captive Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:19-102, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Each captive insurance company [shall pay to the commissioner a nonrefundable fee of $1,000 for examining, investigating, and processing its application for license. In addition, it shall pay a license fee for the year of registration and a renewal fee for each year thereafter of $300.] applying for a certificate of authority under this article shall pay to the commissioner a nonrefundable fee for

examining, investigating, and processing its application for the license. In addition, each captive insurance company receiving a license from the commissioner shall pay an annual license fee for the year of registration and for each annual renewal thereafter. The amount of the application fee and the annual license fee shall be set forth in rules adopted by the commissioner. In addition, the commissioner may adopt rules with respect to fees for the issuance of other documents as may be deemed necessary or requested by captive insurance companies."

SECTION 2. The insurance commissioner shall, prior to January 1, 2000, adopt rules pursuant to chapter 91, Hawaii Revised Statutes, setting forth the respective application, license, and other fees which shall be paid by captive insurance company applicants and licensees.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 1 of this Act shall not take effect until January 1, 2001.

(Approved July 1, 1999.)

ACT 175 H.B. NO. 167

A Bill for an Act Relating to Motor Vehicle Driver Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

"**§286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

(1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of driving under the influence of alcohol or drugs;

(2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;

(3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;

(4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; or

(5) To any person who is under eighteen years of age; provided that a person who is fifteen years and six months may be granted an instruction permit; and provided further that a person who is sixteen to seventeen years of age may be granted a license upon satisfying the requirements of sections 286-108 and 286-109, which license shall be valid for four years and may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the

license, the person shall not be eligible to operate a motor vehicle on the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109.

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129."

SECTION 2. Section 286-108, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Except as provided in section 286-107.5(a), the examiner of drivers shall examine every applicant for a driver's license, except as otherwise provided in this part. The examination shall include a test of:

(1) The applicant's eyesight and any further physical examination [as] that the examiner of drivers finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways;
(2) The applicant's ability to understand highway signs regulating, warning, and directing traffic;
(3) The applicant's knowledge of the rules of the road based on the traffic laws of the State and the traffic ordinances of the county where the applicant resides or intends to operate a motor vehicle; and
(4) The actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

The examinations shall be appropriate to the operation of the category of motor vehicle for which the applicant seeks to be licensed and shall be conducted as required by the director.

The examiner of drivers may waive the actual demonstration of ability to operate a motorcycle or motor scooter for any person who furnishes evidence, to the satisfaction of the examiner of drivers, that the person has completed the motorcycle education course approved by the director in accordance with section 431:10G-104.

At the time of examination, an application for voter registration by mail shall be made available to every applicant for a driver's license.

For the purposes of this section, the term "applicant" does not include any person reactivating a license under section 286-107.5(a).

(b) [Except as provided in subsection (c), the] The examiner of drivers shall require proof from every applicant under the age of eighteen that the applicant has completed a driver education program and a behind-the-wheel driver training course certified by the director of transportation. The examiner of drivers shall not examine any applicant for a driver's license who is [fifteen] sixteen through seventeen years of age unless the applicant holds a valid instruction permit under section 286-110, for a period of no fewer than ninety days."

SECTION 3. Section 286-110, Revised Statutes,[1] is amended as follows:

1. By amending subsection (a) to read:

"(a) Any person aged fifteen years and six months or more who, except for the person's lack of instruction in operating a motor vehicle, would be qualified to obtain a driver's license issued under this part may apply for a temporary instruction permit at the office of the examiner of drivers in the county in which the applicant resides."

2. By amending subsection (c) to read:

"(c) If the examiner of drivers is satisfied that the applicant is qualified to receive an instruction permit, the examiner of drivers shall issue the permit entitling the applicant, while having the permit in the applicant's immediate possession, to drive a motor vehicle upon the highways for a period of one hundred eighty days; provided that an applicant who is registered in a driver training course shall be issued a temporary instruction permit for the duration of the course and the termina-

tion date of the course shall be entered on the permit. A person who is not licensed to operate the category of motor vehicles to which the driving training course applies shall not operate a motor vehicle in connection with the driving training course without a valid temporary instruction permit."

SECTION 4. The director of transportation is directed to establish and certify a statewide driver education program and behind-the-wheel driver training program, to include the number of course hours, curriculum, and certification of teachers and third-party examiners. The director of transportation is also directed to set a cost for the programs to enable the programs to be self-sufficient. The director of transportation shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, necessary for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 2001.

(Approved July 1, 1999.)

Note

1. So in original.

ACT 176 S.B. NO. 1321

A Bill for an Act Relating to Ocean Leasing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter; provided that the authorization of the legislature shall not be required for leases issued under chapter 190D; and provided further that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of state submerged lands or lands beneath tidal waters used for moorings, cables, or pipelines; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to the reclaimed lands shall remain in the State."

SECTION 2. Section 190D-2, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§190D-2[]] Findings and purpose.** Article XI of the Constitution of the State of Hawaii relating to the conservation, control, and development of resources, provides in section 6 that the State shall have the power to manage and control the marine, seabed, and other resources located within the boundaries of the State, including its archipelagic waters, and reserves to the State all such rights outside state boundaries not specifically limited by federal or international law.

The legislature finds that the State's marine waters [and submerged lands] offer the people of Hawaii sources of energy, minerals, food, and usable space. The

legislature further finds that the proper management and development of these ocean resources require defined rights of usage and tenure.

The purpose of this chapter is to establish procedures for the leasing of state marine waters [and submerged lands] and to guarantee property rights and protection for any activities approved under these procedures."

SECTION 3. Section 190D-3, Hawaii Revised Statutes, is amended to read as follows:

1. By adding a new definition to be appropriately inserted and to read:

"""Economic unit" means the water column, state submerged lands beneath the water column, and water surface above the water column which shall be treated as one economic unit for the calculation of lease rents."

2. By amending the definitions of "mariculture", "marine activities", "noncommercial lease", and "state marine waters" to read:

"""Mariculture" means the aquaculture, cultivation, and production for research, development, [and] demonstration, and commercial purposes of aquatic plants and animals within [the State's] state marine [environment.] waters, but excludes floating structures that are not anchored.

"Marine activities" means ocean thermal energy conversion (OTEC); mariculture; and other energy or water[,] research, scientific, and educational activities in, on, or under state marine waters [or submerged lands.] , which are exclusive, non-transient in nature, and which occupy a discrete area of state marine waters.

"Noncommercial lease" means a lease of state marine waters [or submerged lands] for marine activities not designed for profit. [The maximum size of the lease for mariculture shall not exceed four acres.]

"State marine waters" means all waters of the State, including the water column [and], water surface, and state submerged lands, extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary."

SECTION 4. Section 190D-11, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsections (a), (b), and (c) to read:

"(a) Any person desiring to lease state marine waters [or submerged lands] shall submit to the board [a conservation district use] an application for specific activities in any specific area or areas. Applications made pursuant to this chapter shall contain:

(1) An environmental assessment or, if required, an environmental impact statement which shall be prepared and accepted in compliance with the rules adopted under chapter 343;
(2) A description of the location and boundaries of the state marine waters [and submerged lands] to be used and a description of the nature of the use desired;
(3) A statement of the reasons for selecting the proposed location;
(4) A description of the activities to be conducted, including a specification as to whether such activities are commercial or noncommercial, a timetable for construction, deployment, and operation of facilities, and planned levels of production;
(5) Where the application is for mariculture, a description of the species to be cultivated and produced;
(6) A statement on the extent to which the proposed activities will interfere with the use of the state marine waters for the purposes of navigation, fishing, and public recreation;

(7) A description of any enclosure, fences, stakes, buoys, or monuments proposed to mark off the desired area; [and]

(8) An initial description of current users (military, governmental, commercial, recreational, and cultural) and their uses of the state marine waters requested for lease, including any practitioners of traditional and customary Hawaiian rights; and

[(8)] (9) Other information which the board determines to be necessary or appropriate, including financial and technical information.

(b) The department shall process the [conservation district use] application pursuant to chapter 183C [and rules adopted under this chapter]. Within sixty days after the submission of [a conservation district use] a completed application with a request for a lease for marine activities in state marine waters [or submerged lands] and the receipt of the related environmental assessment or environmental impact statement, the department shall issue a public notice that the application has been received. The public notice shall describe [the] :

(1) The state marine waters [or submerged lands, or both,] for which application has been made[, the];

(2) The nature of the exclusive use sought[,]; and [the]

(3) The purpose for which the application has been made.

The notice shall be given on three separate days statewide and in the county nearest the state marine waters [or submerged lands] for which application has been made. The public notice shall invite public comment.

(c) Notice of hearings shall be provided and hearings shall be conducted in accordance with department rules regarding [conservation district use] applications. If the area described in the application adjoins any private property or adjoins or overlaps, above or below, any leased state marine waters [or submerged lands], or if the proposed activity will affect the property or property rights of private property owners or lessees of state marine waters [or submerged lands], the department also shall notify the owners or lessees of the adjoining, overlapping, or affected property. Notice shall be given in writing, by personal service or by registered or certified mail, and shall describe [the]:

(1) The state marine waters [or submerged lands, or both,] for which application has been made[, the];

(2) The nature of the exclusive use sought[,]; and [the]

(3) The purpose for which the application has been made."

2. By amending subsection (e) to read:

"(e) The board shall not approve an application unless it finds that:

(1) [the] The applicant has the capacity to carry out the entire project; and

(2) [the] The proposed project is clearly in the public interest upon consideration of the overall economic, social, and environmental impacts."

SECTION 5. Section 190D-21, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), (d), and (e) to read as follows:

"(a) The board may lease state marine waters [and submerged lands] for marine activities upon compliance with section 171-53 and with the concurrence of the director of transportation. Leases may be issued only for marine activities which are allowed pursuant to an approved [conservation district use] application. The board shall make a determination that each lease is a commercial or noncommercial lease.

(b) The board shall not lease state marine waters [or submerged lands] when existing programs of the department, such as the marine life conservation district program, shoreline fisheries management area program, or the natural area reserve program will suffer adverse [impact] impacts as a consequence of the proposed

activities; provided [further] that no lease shall be awarded within state marine waters designated as being necessary for national defense purposes, as determined by the department in consultation with the appropriate federal agencies.

(c) The board shall not lease state marine waters [or submerged lands] unless the board finds that a lease for the proposed activity, after detailed consideration of the present uses, is clearly in the public interest upon consideration of the overall economic, social, and environmental impacts and consistent with other state policy goals and objectives.

(d) The board shall not lease state marine waters [or submerged lands] unless the board finds that the applicant for a lease has complied with applicable federal, state, and county statutes, ordinances, and rules.

(e) The board may require any person who has obtained approval of [a conservation district use] an application for marine activities or the operation of an OTEC facility in state marine waters [or submerged lands] to enter into a lease for the conduct of those activities."

SECTION 6. Section 190D-22, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§190D-22[]] Leasing procedure.** (a) Any person who wants to obtain a lease for marine activities in state marine waters [or submerged lands] shall request a lease from the board at the time of filing [a conservation district use] an application.

(b) Upon [approval of a conservation district use] receipt of a completed application[,] and authorization of a lease, the board [may either:] shall:

(1) Negotiate with and grant a lease to the applicant; or

(2) Conduct a public auction and grant the lease to the highest qualified bidder.

Public auctions shall be conducted in accordance with chapter 171. If an auction is held and the applicant [who has gone through the conservation district use] submitting a completed application is not the highest qualified bidder, the board shall require the highest qualified bidder to indemnify the applicant for all legitimate costs incurred [by the applicant to obtain approval of the conservation district use application.] in the preparation of any environmental assessment or environmental impact statement included in the application pursuant to chapter 343 and the rules adopted thereunder. In establishing and following internal procedures for lease applications, the board shall attempt to minimize costs to those applicants submitting completed applications.

(c) The board shall not revoke or modify its approval of [a conservation district use] an application in such a way as to invalidate, impair, limit, or affect, directly or indirectly, in whole or in part, the rights of a lessee as set forth in the lease granted to the lessee pursuant to this chapter."

SECTION 7. Section 190D-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Leases issued by the board shall be drawn up in accordance with the following requirements, in addition to any [others] other requirements determined by the board:

(1) Each lease shall specify the term of the lease and the nature of the exclusive use of the area being granted[.];

(2) Each lease shall specify the marine activities or other resources which may be cultivated, produced, harvested, removed, or used pursuant to the lease[.];

(3) Each lease shall specify an annual rent set by the board for the leased [marine waters or submerged lands.] area. The basic rental charged in a

commercial lease may be supplemented by royalty payments. No royalty shall be charged in a noncommercial lease[.];

(4) Leases may specify that failure of the lessee to perform substantially the activities for which the lease was granted shall constitute grounds for revocation of the lease and forfeiture to the State of all structures and, in the case of mariculture activities, all plants or animals cultivated, in and upon the leased [marine waters and submerged lands.] area;

(5) Each lease shall require that the lessee execute a bond conditioned upon the substantial performance of the activities described in the lease. The amount of the bond so executed shall be appropriate to the size, scale, and risk of the activity for which the lease is granted, and shall be sufficient to protect the public interest in the removal of all structures and, in the case of mariculture activities, all marine plants or animals cultivated, as well as to restore or remediate the water and state submerged lands to the satisfaction of the department in and upon the leased state marine waters [and submerged lands], if the lease is forfeited for nonperformance or the board requires the removal or eradication of marine plants or animals pursuant to paragraph (11)[.];

(6) Each lease shall specify that if a lessee abandons a leased area, the board may order the removal or sale at public auction of all improvements, assets, marine plants or animals, and equipment remaining in and upon the leased area, and shall transmit to the state general fund the entire amount received from any public auction and any proceeds received from the lessee's performance bond. Alternatively, the board may permit the use of the improvements, assets, marine plants or animals, and equipment for purposes which benefit the general public[.];

(7) Each lease for mariculture shall specify that the marine plants or animals described in the lease to be cultivated and contained within the leased area are the exclusive harvest of the lessee; provided that any marine plant or animal which escapes from the leased area and is not clearly identifiable as the property of the lessee, shall become common property and may be taken or caught by any person, subject to the fishing laws of the State, without violating the rights of the lessee[.];

(8) Each lease for mariculture shall specify that [the]:

(A) The lessee is responsible for the removal of any cultivated marine plants or animals found outside the leased area but within state marine waters [or submerged lands] if removal is required to protect the environment or public health and safety, and removal is demanded by the board; [that the]

(B) The lessee is solely responsible for all costs of removal of such marine plants or animals; and [that if]

(C) If action must be taken by the department to eradicate escaped marine plants or animals, all costs of eradication shall be borne by the lessee; provided that the costs borne by the lessee shall be no greater than the amount of the bond required under paragraph (5)[.];

(9) Leases may specify that the lessee shall construct and maintain gates, openings, or lanes at reasonable distances from one another throughout a leased area which includes surface waters and in which any type of enclosure is an obstacle to free navigation, unless public transit in or through the enclosed waters will cause undue interference with the operation being conducted by the lessee within the leased area[.];

(10) Leases may require, where necessary, that [all]:

(A) All lessees mark off the areas under lease by appropriate ranges, monuments, stakes, buoys, [or] fences, or any other devices placed so that they do not interfere unnecessarily with navigation and other traditional uses of the water surface; [that all]

(B) All lessees identify the area under lease and the names of the lessees on signs appropriately placed pursuant to [rules of] specifications established by the board; and [that all]

(C) All limitations upon the use by the public of an ocean area under lease shall be clearly posted by the lessee pursuant to [rules] specifications established by the board[.];

(11) Leases shall specify that if the chairperson finds or has reasonable cause to believe that an activity conducted by the lessee in or upon the area described in the lease is causing an immediate danger to human or marine life or the environment of the state marine waters [or submerged lands], the chairperson may direct a temporary or permanent suspension of commercial or research activities in the affected area. The chairperson shall then notify the board. The board shall immediately order the lessee or lessees affected by such notice to show cause why their activities should not be terminated, or why any structures, cultivated marine plants or animals, or equipment should not be removed from state marine waters [or submerged lands]. The board shall proceed to hold a public hearing and issue its order with respect to such hearing within a reasonable period. In its order following such hearing, the board may direct a temporary or permanent suspension of commercial or research activities in the affected area, removal of equipment or cultivated marine plants or animals, or such other measures as shall be deemed necessary for protection of human or marine life and environment of state marine waters [and submerged lands], including forfeiture to and destruction by the State of any marine plant or animal species[.];

(12) Each lease shall specify that the lease may be assigned in whole or in part, or amended, only if the board determines that such assignment or amendment is in the public interest and meets the provisions of this chapter[.] and consents to the assignments. The board may consent to the mortgage of a lease pursuant to section 171-22[.];

(13) Each lease shall specify that the lease may be revoked by the board for violation of any lease provision. The board shall deliver a written notice of the breach or default of any lease agreement by registered or certified mail to the party in default and to each holder of record having any security interest in the state marine waters [and submerged lands] covered by or subject to the lease, making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice. Upon failure of the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice, or within such additional period the board may allow for good cause, the board may revoke the lease[.]; and

(14) Each lease shall contain a statement describing the degree of exclusivity or access to the site by the public that will be based on an analysis of the user listing and descriptions provided in the application, and comments made by the public and in consideration of, but not limited to the following: compatibility of the operation with existing uses, perceived liability to the lessee and the public, and perceived risk to the lessee's investment."

SECTION 8. Section 190D-32, Hawaii Revised Statutes, is amended to read as follows:

"[[]§190D-32[]] **Rules.** The board [shall] may adopt such rules as are necessary and appropriate to carry out the purposes and provisions of this chapter. The adoption of these rules shall be in accordance with chapter 91."

SECTION 9. Section 190D-33, Hawaii Revised Statutes, is amended to read as follows:

"[[]§190D-33[]] **Revenues.** The revenues obtained from the leasing of state marine waters [and submerged lands] pursuant to this chapter shall be deposited into the [general fund;] special land and development fund to be used for planning, research, and development of the aquaculture industry; provided that the portion of revenues subject to chapter 10, shall be deposited into the public land trust fund as provided by law."

SECTION 10. Section 190D-34, Hawaii Revised Statutes, is amended to read as follows:

"[[]§190D-34[]] **Penalties.** Any person who conducts any mariculture or OTEC activities prohibited by a lease granted by the board, or who conducts these activities in or upon state marine waters [or submerged lands] without having obtained the approval of the board, shall be fined not more than $10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action."

SECTION 11. The amendments made to chapter 190D, Hawaii Revised Statutes, by this Act shall be repealed five years after the effective date of this Act; provided that sections 190D-2, 190D-3, 190D-11, 190D-21, 190D-22, 190D-23, 190D-32, 190D-33, and 190D-34 shall be reenacted in the form in which they read on the day before the approval of this Act. The leases granted during the period in which this Act is effective, in addition to any terms agreed to therein, shall remain in force throughout the term of the lease and shall not be affected by the repeal of this Act upon the tolling of the five-year drop dead period.

SECTION 12. The department of land and natural resources in cooperation with the department of agriculture shall submit a progress report on the implementation of this chapter to the legislature prior to each regular session.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

ACT 177 H.B. NO. 336

A Bill for an Act Relating to Plant and Non-Domestic Animal Quarantine.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

"PART V. CERTIFIED IMPORTERS OF MICROORGANISMS

§150A-A Microorganism import. (a) Notwithstanding the permit requirements of sections 150A-5 and 150A-6, the board may issue a certificate to an importer of microorganisms authorizing import and possession of microorganisms, other than microorganisms on the lists of nonrestricted microorganisms or prohibited microorganisms referenced in section 150A-6; provided that:

(1) The import and possession is for medical or scientific purposes;
(2) The microorganisms are contained in a laboratory or other contained system approved by the department;
(3) The microorganisms are used in a manner that will not be detrimental to agriculture, horticulture, the environment, animals, or humans; and
(4) The importer is able to meet requirements established by the board, as further verified through site inspection by the department.

(b) Import by a certified importer of microorganisms other than those listed in the importer's certificate or for uses other than specified for each type of microorganism listed in the certificate shall be pursuant to section 150A-6.

(c) A certified importer importing pursuant to certificate shall comply with the provisions of part II other than the permit requirement, as applicable, in particular, the notification, labeling, and inspection requirements of section 150A-5.

§150A-B Certificate. (a) An importer requesting a certificate under this part shall complete and submit an application to the department providing information as required by rule.

(b) Fees may be assessed for the processing and issuance of a certificate and for inspections related to the certificate, as established by rule. Fees may vary according to the type of certification issued and the costs incurred for inspections.

(c) A certificate issued under this part shall be valid for no more than two years from date of issuance. A certified importer may reapply for certification pursuant to subsection (a).

§150A-C Suspension or revocation of certificate. Any certificate issued pursuant to this part may be suspended or revoked by the department, after hearing, for violation of any certificate requirement or condition or any provision of this chapter or rule adopted under this part. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. The action of the department in suspending or revoking a certificate may be reviewed in the manner provided in chapter 91.

§150A-D Summary suspension. Notwithstanding any law to the contrary, the department may cause the immediate suspension of an importer's certificate, subject to subsequent notice and hearing or other adequate procedures, upon the department's determination that there is an impending danger of escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate so as to present a threat to public health or safety, animal health, agriculture,

horticulture, or the environment, or in the event of a medical emergency or agricultural or ecological disaster resulting from escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate.

The department may order the summary suspension of the certificate for a period not to exceed twenty days. The order of suspension shall be served upon the certified importer at the same time as the notice of hearing for further suspension or revocation and the hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing shall not be extended beyond twenty days except upon the request of the importer for a reasonable continuance to adequately prepare the importer's defense. Any attempt by the importer to continue the certified activity while the certificate has been summarily suspended shall of itself be sufficient to warrant a permanent revocation of the certificate and shall subject the importer to all penalties prescribed by this chapter or any rule or order of the department.

§150A-E Emergency remediation. In conjunction with summary suspension of an importer's certificate, upon the department's determination that there is an impending danger of escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate so as to present a threat to public health or safety, animal health, agriculture, horticulture, or the environment, or in the event of a medical emergency or agricultural or ecological disaster resulting from escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate, the department may, at the expense of the importer, seize, quarantine, remediate, condemn, or destroy the imported microorganisms, or any contaminated material, containment equipment, and laboratory or other contained system approved by the department, as the department in its discretion determines is necessary to address the threat, emergency, or disaster.

§150A-F Conditions of importation under certification. (a) A certificate issued to an importer under this part is non-transferable.

(b) Every importer issued a certificate shall comply with the requirements of the certificate.

(c) Any department employee or authorized representative may enter the premises under certification at any reasonable time to examine and inspect any microorganism, records, laboratory or other contained system approved by the department, equipment, procedures, manuals, and other related materials pertaining to the microorganism imported pursuant to certificate, and may conduct tests, collect samples, or perform any other duty for the purpose of carrying out and effectuating the purposes of this chapter.

§150A-G Penalties. In addition to penalties that may be applicable under section 150A-14, certified importers are subject to penalties as follows:

(1) A certified importer who violates any of the foregoing sections in this part shall be guilty of a petty misdemeanor and, notwithstanding section 706-640, shall be subject to a fine of not less than $1,000 and not more than $10,000; and

(2) A certified importer who intentionally imports a microorganism not allowed by the importer's certification with the intent to propagate, sell, or release the microorganism shall be guilty of a class C felony and, notwithstanding section 706-640, shall be subject to a fine of not less than $50,000 but not more than $500,000.

§150A-H Microorganism import certification revolving fund. (a) There is established in the state treasury the microorganism import certification revolving

fund which shall be administered by the department for the purposes of this section. The microorganism import certification revolving fund shall consist of:

(1) Legislative appropriations to the microorganism import certification revolving fund;
(2) Certification and inspection fees, as authorized by rule;
(3) All fines collected pursuant to this part;
(4) Reimbursements for any costs paid by the department to remediate any impending danger or actual emergencies involving microorganisms imported pursuant to certificate;
(5) All interest earned on or accrued to moneys deposited in the microorganism import certification revolving fund;
(6) Grants and gifts to the microorganism import certification revolving fund; and
(7) Any other moneys made available to the microorganism import certification revolving fund from other sources;

(b) The balance in the microorganism import certification revolving fund shall not exceed $500,000. All amounts in excess of $500,000 shall be deposited to the credit of the state general fund.

(c) The department shall expend moneys in the microorganism import certification revolving fund for the development, administration, and operation of the microorganism import certification program, including but not limited to personnel, training, materials and equipment, compliance monitoring activities, educational workshops for certified importers and applicants for certification, evaluation and remediation of impending threat or actual emergencies related to microorganisms imported pursuant to certificate, and for any other purpose deemed necessary to carry out the purposes of this part.

(d) The department may set fees, by rule, for educational workshops for certified importers or applicants for certification."

SECTION 2. Section 150A-2, Hawaii Revised Statutes, is amended by amending the definitions of "algae", "bacteria", "fungus", "protozoa", and "virus" to read as follows:

""Algae" means any plant containing chlorophyll, which lacks true roots, stems, and leaves, and typically inhabits moist habitats, except those algae on or in humans or animals in Hawaii and those in or on processed foods, beverages, or pharmaceuticals[, and those in certain microbial products or used as food or for food preparation as specified by rule].

"Bacteria" means any prokaryotic or [archaebacterial] archaeobacterial organism, except those bacteria on or in humans or animals in Hawaii, and those in or on processed foods, beverages, or pharmaceuticals[, and those in certain microbial products or used as food or for food preparation as specified by rule].

"Fungus" means all nonchlorophyll-bearing thallophytes, except those fungi on or in humans or animals in Hawaii, and those on or in processed foods, beverages, or pharmaceuticals[, and those in certain microbial products or used as food or for food preparation as specified by rule].

"Protozoa" means any nonphotosynthetic eukaryotic organisms, either unicellular or composed of a group of more or less identical cells, generally motile by means of appendages or movements of the cell itself at some or all stages of their life cycle, except those protozoa on or in humans or animals in Hawaii, and those in or on processed foods, beverages, or pharmaceuticals[, and those in certain microbial products as specified by rule].

"Virus" means any or a class of noncellular submicroscopic obligate parasite, chiefly nucleoprotein in composition but often reducible to crystalline form, except those viruses on or in humans, or animals in Hawaii, and those on or in

processed foods, beverages, or pharmaceuticals[, and those in certain microbial products as specified by rule].''

SECTION 3. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

''§150A-6 Soil, plants, animals, etc., importation or possession prohibited. (a) No person shall transport, receive for transport, or cause to be transported to the State, for the purpose of debarkation or entry thereinto, any of the following:

(1) Soil; provided that limited quantifies[1] of soil may be imported into the State for experimental or other scientific purposes under permit with conditions prescribed by the department;

(2) Rocks, plants, plant products, or any article with soil adhering thereto;

(3) Any live snake, flying fox, fruit bat, Gila monster, injurious insect, or eels of the order Anguilliformes, or any other animal, plant, or microorganism in any stage of development that is detrimental or potentially harmful to agriculture, horticulture, animal or public health, or natural resources, including native biota, or has an adverse effect on the environment as determined by the board, except that, notwithstanding the list of animals prohibited entry into the State, the department may bring into and maintain in the State one live, sterile brown tree snake of the male sex for the purpose of research or training of snake detector dogs, and, further, that a government agency may bring into and maintain in the State not more than two live, nonvenomous snakes of the male sex solely for the purpose of exhibition in a government zoo, but only after:

(A) The board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment; and

(B) The[2] gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include measures to assure the prevention of escape, continuing supervision and control by the board with respect to any department import under this paragraph, and the manner in which the snakes shall be disposed of or destroyed.

In case of the death of one or more snakes, the department or government agency may import and maintain replacements subject to the conditions described in this paragraph; and

(4) Any live or dead honey bees, or used bee equipment that is not certified by the department to be free of pests; provided that nothing in this paragraph shall be construed to prohibit the importation of bee semen.

(b) The board shall maintain:

(1) A list of [conditionally-approved] conditionally approved animals [and microorganisms] that require a permit for import into the State;

(2) A list of restricted animals [and microorganisms] that require a permit for both import into the State and possession; and

(3) A list of animals [and microorganisms] that are prohibited entry into the State;

provided that the board shall adopt rules, pursuant to chapter 91, to establish an ad hoc panel of no fewer than three members with applicable expertise in vertebrate biology to identify whether an animal is a prohibited hybrid animal when the department suspects that the lineage of the animal is not as stated by the owner or on other official documents.

Animals [and microorganisms] on the lists of [conditionally-approved] conditionally approved and restricted animals [and microorganisms] shall be im-

ported only by permit. Any animal [or microorganism] that is not on the lists of [conditionally-approved] conditionally approved, restricted, or prohibited animals [and microorganisms] shall be prohibited until the board's review and determination for placement on one of these lists; provided that the department may issue a special permit on a case-by-case basis for the importation and possession of an animal [or a microorganism] that is not on the lists of prohibited, restricted, or [conditionally-approved] conditionally approved animals [or microorganisms], for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting medical or scientific research in a manner that the animal [or microorganism] will not be detrimental to agriculture, the environment, or humans if the importer of the animal [or microorganism] can meet permit requirements [consistent with Centers for Disease Control and National Institute of Health guidelines or other guidelines] as determined by the board; and provided further that the department may issue a short-term special permit on a case-by-case basis not to exceed ninety days for the importation and possession of an animal that is not on the list of prohibited, restricted, or [conditionally-approved] conditionally approved animals for the purpose of filming, performance, or exhibition if the importer of the animal can meet permit and bonding requirements as determined by the board. [All]

(c) The board shall maintain:

(1) A list of nonrestricted microorganisms allowed entry into the State without a permit but which are subject to the notification, labeling, and inspection requirements of section 150A-5;

(2) A list of restricted microorganisms that require a permit for import into the State and possession, except as otherwise provided in part V; and

(3) A list of microorganisms that are prohibited entry into the State, except that the department may issue an emergency permit on a case-by-case basis to a state or federal agency or state university for the import and possession of a microorganism on the list of prohibited microorganisms for the purpose of remediating medical emergencies or agricultural or ecological disasters pursuant to the board's determination that:

(A) An emergency or disaster exists; and

(B) The importer is able to meet permit requirements consistent with Centers for Disease Control and Prevention and National Institutes of Health guidelines or other guidelines as determined by the board.

No emergency permit may be issued until the board, without regard to rule requirements for advisory review, obtains advice from qualified persons with relevant expertise.

Except as otherwise provided in part V, any microorganism that is not on the lists of nonrestricted, restricted, or prohibited microorganisms may not enter the State until the board's review and determination for placement on one of those lists; provided that pending the listing by rule of an unlisted microorganism determined by the board to be allowed for import, the department may issue a special permit on a case-by-case basis for the import and possession of the microorganism for purposes approved by the board if the microorganism is to be used in a manner that will not be detrimental to agriculture, horticulture, the environment, animals, and humans, and if the importer is able to meet conditions established by the board.

(d) Except as otherwise provided herein, all permits referenced in this section shall be issued pursuant to rules. Any violation of the conditions listed on the permits shall be a violation of this section.

[(c)] (e) The board shall maintain a list of restricted plants and a list of prohibited plants. Restricted plants shall not be imported into the State without a permit issued pursuant to rules, and any violation of the conditions listed on the permit shall be a violation of this section.

[(d)] (f) No person shall possess, propagate, sell, transfer, or harbor any plant, animal, or microorganism included on the list or lists of prohibited plants, animals, and microorganisms maintained by the board under this section, except as allowed by the board upon a determination that the species:

(1) Was initially permitted entry and later prohibited entry into the State; or
(2) Was continually prohibited but unlawfully introduced and is currently established in the State; and
(3) Is not significantly harmful to agriculture, horticulture, animal or public health, and the environment.

Under the circumstances described in this subsection, the board may permit possession of the individual plant, animal, or microorganism through its registration with the department while still prohibiting the same species of plant, animal, or microorganism from importation, propagation, transfer, and sale.

[(e)] (g) Without regard to the notice and public hearing requirements of chapter 91, the board may adopt rules to make additions to or deletions from the lists required to be maintained in subsections (b), [and] (c)[;], and (e); provided that the board shall adopt rules pursuant to chapter 91 to establish methods to obtain public input and to notify the public as to any additions to or deletions from the lists required under subsections (b), [and] (c)[.], and (e).''

SECTION 4. Section 150A-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

''(b) It is a violation of section 150A-6 to bring to or possess in the State any living creature that is prohibited, or restricted and without a permit issued by the department, except as expressly provided in that section or in part V, and such a creature shall constitute contraband and shall be seized immediately upon discovery whenever found, and be destroyed, donated to a government zoo, or sent out of the State, at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent. [The foregoing shall not apply to any snake which is brought into the State by the department for the purpose of research or training of snake detector dogs, or by a government agency solely for the purpose of exhibition in a government zoo pursuant to section 150A-6(a)(3).]''

SECTION 5. Section 150A-7.5, Hawaii Revised Statutes, is amended to read as follows:

''**[[]§150A-7.5[]] User fees.** Fees may be assessed for the processing and issuance of [import] permits issued by the department under this part and for inspections related to [import] permit conditions, as established by rule.''

SECTION 6. Section 150A-9.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

''(c) Interim rules adopted by the department pursuant to this section shall be effective as stated by such rules; provided that any interim rule shall be published at least once [in each newspaper of general circulation in the State] statewide within [five] ten days of issuance; and provided further that no interim rule shall be effective for more than one hundred eighty days.''

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of $0 or so much thereof as may be necessary for fiscal year 1999-2000 and the same sum or so much thereof as may be necessary for fiscal year 2000-2001 to be deposited into the Microorganism Import Certification Revolving Fund for the development, administration, and operation of the microorganism import certification program.

SECTION 8. There is appropriated out of the Microorganism Import Certification Revolving Fund the sum of $100,000 or so much thereof as may be necessary for fiscal year 1999-2000 and the same sum or so much thereof as be necessary for fiscal year 2000-2001 for the development, administration, and operation of the microorganism import certification program.

SECTION 9. The sums appropriated shall be expended by the department of agriculture for the purposes of the Microorganism Import Certification Revolving Fund.

SECTION 10. In codifying the new sections added by this Act, the revisor of statutes shall substitute the appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 1999.

(Approved July 1, 1999.)

Notes

1. So in original.
2. Prior to amendment "board" appeared here.

ACT 178 S.B. NO. 1583

A Bill for an Act Relating to Technology.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that Hawaii is one of the most geographically isolated communities on earth, and for many years, our economic opportunities were limited by this isolation. Recent advances in telecommunications, information technology, and the explosive growth of the Internet, however, present significant new opportunities for the State to develop and diversify its economy, opening the global market to Hawaii businesses.

Fiber optic cables, connecting Hawaii with the mainland United States and Asia, and new communications satellites have dramatically increased both the volume of information sent and the range of transmittal. While transmission capacity increases, costs continue to fall. Today, Internet commerce represents a small fraction of all business transacted, but industry watchers estimate that within the next seven years, half of all business and consumer purchases will be done by computer. In this new era, connection is everything.

The legislature further finds that Hawaii's opportunities also represent new challenges. Businesses—particularly the small, start-ups associated with high technology—no longer need to factor in Hawaii's geographic isolation, but must still consider the cost of doing business in the State. They also face a confusing, often overlapping, group of state agencies that provide support for technology-related business. Providing targeted assistance to these businesses, as well as a clear focus of responsibility within state government for aggressive development and support of high technology resources, will better serve the burgeoning technology industry.

The legislature also finds that education will be forever changed as businesses and workers alike demand new skills and rapid-response delivery of these skills. Our schools must move beyond the traditional book and classroom delivery and embrace a technologically-connected model for learning. In 1998, the legislature appropriated funds to provide high-speed Internet access to the University of Hawaii and all state agencies, including schools. As a result, establishing schools and libraries as community access points can be accelerated.

If Hawaii is to become a state known for leading its people effectively into the twenty-first century, the legislature believes progress and change must begin immediately. The purpose of this Act is to support the growth and development of high technology industries in Hawaii by:

(1) Consolidating the State's high technology agencies, divisions, and offices under the coordination and direction of a special advisor for technology development and creating a governor's special advisory council for technology development to assist the advisor;
(2) Integrating technology with Hawaii's tourism and marketing industries;
(3) Prohibiting the imposition of discriminatory taxes on Internet commerce;
(4) Focusing work force development programs to ensure a pool of technology professionals;
(5) Accelerating high speed access to the Internet for the University of Hawaii and the public schools, and establishing educational technology programs within public schools;
(6) Exempting stock options from qualified high technology businesses from income taxation;
(7) Exempting royalties from qualified high technology businesses and other similar sources from gross income for income tax purposes; and
(8) Creating tax credits for investment in high technology businesses and increasing research activities.

PART II

SECTION 2. Over the years, the legislature has created a number of state agencies charged with promoting the development of a variety of technological industries. While these agencies provide valuable services, they lack focus, and in some cases, their original missions have changed considerably. Consolidation of these agencies under a single entity to coordinate their activities will provide a more focused effort in attracting high technology businesses to Hawaii.

SECTION 3. The Hawaii Revised Statutes is amended by adding two new sections to be appropriately designated and to read as follows:

"§ - **Special advisor for technology development.** (a) There is established within the office of the governor a special advisor for technology development to be appointed by the governor as provided in section 26-34.

(b) The duties of the special advisor shall include but not be limited to:

(1) Developing, coordinating, and implementing short- and long-range state policies and directions to enhance the development of high technology industries in Hawaii;
(2) Coordinating all state high technology agencies while developing a plan for reorganization or consolidation of these agencies in the interests of greater efficiency and cost effectiveness;

(3) Advising the private sector in the development of high technology activities and resources and providing technical or other assistance to private industry upon request;
(4) Creating, disseminating, and updating a listing of all high technology assistance programs in the State and where they can be reached;
(5) Pursuing appropriate public-private sector business partnerships;
(6) Coordinating the State's promotion and marketing of the high technology industry, including a review of current marketing efforts;
(7) Arranging for the conduct of research through contractual services with the University of Hawaii or any agency or other qualified persons;
(8) Encouraging the development of educational, training, and career programs in high technology industries; and
(9) Performing other necessary or desirable functions to facilitate the intent of this section.

(c) In carrying out the duties of this section, the special advisor for technology development may utilize the services of the State's high technology agencies, including those of the University of Hawaii, as appropriate.

(d) In carrying out the duties of this section, the special advisor for technology development shall seek and utilize any available funding sources, including grant moneys.

§ - **Governor's special advisory council for technology development; establishment; appointment, number, and term of members; duties.** (a) There is established within the office of the governor, for administrative purposes, an advisory council to be known as the governor's special advisory council for technology development, that shall review and make recommendations on matters relating to the marketing and promotion of Hawaii as a location for high technology companies. The council shall be composed of at least eleven but no more than twenty-five members appointed in accordance with section 26-34, and shall include representatives of the high technology industry, business leaders, educators, government leaders, and legislators.

(b) The members shall be appointed by the governor for four years, except that the terms of the members first appointed shall be for two and four years, respectively, as designated by the governor at the time of appointment. The council shall elect a chairperson from among its members.

(c) In appointing members, the governor shall select persons who have knowledge of the high technology industry, the educational needs of the industry, or in the marketing and promotion of high technology industries. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) The council shall assist the special advisor for technology development in developing and coordinating the marketing and promotion of the high technology industry in Hawaii.

(e) In carrying out the duties of this section, the council shall seek and utilize any available funding sources, including grant moneys.

(e)[1] This section is repealed on December 31, 2005."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $100,000, or so much thereof as may be necessary for fiscal year 1999-2000, and the same sum, or so much thereof as may be necessary for fiscal year 2000-2001, for the special advisor for technology development and the governor's special advisory council for technology development. The sums appropriated shall be expended by the office of the governor for the purposes of section 3.

PART III

SECTION 5. The purpose of this Part is to foster the development of knowledge-based industries by integrating those industries with Hawaii's economy in a way that enhances and strengthens the tourism industry.

SECTION 6. Section 201-97, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§201-97[]] Integration and development of the tourism industry.** The office shall be responsible for planning for the integrated and coordinated development and expansion of the tourism industry of the State. The office shall investigate and recommend to appropriate governmental officers, agencies, legislative committees, and private groups ways and means of coordinating promotional activities on behalf of tourism with the development of recreational and other facilities, and with existing and potential information and communications technology networks and services in the State, for improved tourism development. The office shall also review the expenditure of governmental funds for tourism-related activities and shall prepare an annual report on the expenditures, together with any recommendations the office may have. The annual report shall be submitted to the legislature as part of the annual report required under section 201-98."

SECTION 7. Section 201B-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The authority shall be responsible for developing a strategic tourism marketing plan [which] that shall be updated every three years[, that] and includes the following:

(1) Identification and evaluation of current and future tourism needs for the different regions of the State;
(2) Goals and objectives in accordance with identified needs;
(3) Statewide promotional efforts and programs;
(4) Targeted markets;
(5) Efforts to enter into brand marketing projects that make effective use of cooperative advertising programs;
(6) Measures of effectiveness for the authority's promotional programs; and
(7) Coordination of marketing plans of all destination marketing organizations receiving state funding prior to finalization of the authority's marketing plan.

The authority shall also develop and include in its marketing plan, goals and objectives for marketing the State to the techno-tourism niche as well as for integrating marketing objectives with existing and potential state telecommunications and information resources in the public and private sectors. The authority shall also coordinate the requirements for and availability of the State's existing and potential telecommunications and information resources with the department of accounting and general services."

PART IV

SECTION 8. Economic development opportunities are changing. The playing field is now the world and not the next state or country. The Internet is the catalyst, and the enabling infrastructure is technology and telecommunications. The legislature finds that exempting Internet commerce from state taxation will be a key element that allows Hawaii's businesses to establish a global presence.

SECTION 9. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§231- Hawaii Internet Tax Freedom Act.** (a) No discriminatory tax shall be imposed under chapter 235 (relating to income tax), chapter 237 (relating to the general excise tax), or chapter 238 (relating to the use tax) on electronic commerce or Internet access.

(b) As used in this section "discriminatory tax" means:

(1) Any tax imposed by the State or county on electronic commerce that:
   (A) Is not generally imposed and legally collectible by the State or county on transactions involving similar property, goods, services, or information accomplished through other means;
   (B) Is not generally imposed and legally collectible at the same rate by such State or county on transactions involving similar property, goods, services, or information accomplished through other means;
   (C) Imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;
   (D) Establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on those providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(2) Any tax imposed by the State or county if:
   (A) The sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or
   (B) A provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of:
      (i) The display of a remote seller's information or content on the out-of-State computer server or a provider of Internet access service or online services; or
      (ii) The processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

(c) As used in this section:

"Electronic commerce" means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

"Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software that comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to that protocol, to communicate information of all kinds by wire or radio.

"Internet access" means a service or license that enables users to access content, information, electronic mail, or other services or licenses offered over the Internet, and may also include access to proprietary content, information, and other services or licenses as part of a package of services or licenses offered to users. The term does not include telecommunications service as defined in section 269-1.

(d) This section shall not apply to taxable years beginning after December 31, 2005."

SECTION 10. Notwithstanding section 304-7.8, Hawaii Revised Statutes, or any other law to the contrary, the University of Hawaii office of technology transfer and economic development may expend amounts up to $4,000,000 from the discoveries and inventions revolving fund in section 304-8.92, Hawaii Revised Statutes, for the purposes of that fund in fiscal year 1999-2000.

PART V

SECTION 11. The legislature finds that a training program to improve the skills of new and existing workers for jobs in new and emerging industries would help stimulate the State's economy. Industries such as biotechnology, health care, information technology, environmental science and technology, and telecommunications must often import their workers because the State's existing workforce lacks necessary skills. A state-funded training program would lessen the need to import workers and increase the opportunities for Hawaii's residents to move upward in the job market by improving their skills.

SECTION 12. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

"§ - **Millennium workforce development training program.** (a) There is established a millennium workforce development training program, hereinafter referred to as the program, that shall be placed with the department of labor and industrial relations for administrative purposes. The program shall provide education and training at the post-high-school to graduate levels, and shall include public, private, and for-profit educational institutions. In the design and delivery of training, the program may cooperate or contract with other public, private, and for-profit institutions.

(b) The program shall seek and encourage partnerships with private sector industries such as biotechnology, information technology, environmental science and technology, and telecommunications, as may be appropriate, to provide pre-employment or employment training, or on-the-job training for employees and perspective employees.

(c) The department of labor and industrial relations shall establish and lead a public and private partnership task group, that shall include representatives from the department of business, economic development, and tourism, the University of Hawaii at Manoa, the University of Hawaii community colleges, and private sector representatives to advise on the program design, industry, recruitment, and training delivery activities of participating entities.

(d) In carrying out the duties of this section, the department of labor and industrial relations and the University of Hawaii shall seek and utilize any available funding sources, including grant moneys."

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of $50,000, or so much thereof as may be necessary for fiscal year 1999-2000, and the same sum, or so much thereof as may be necessary for fiscal year 2000-2001, to provide funds to the department of labor and industrial relations to establish a millennium workforce development program. The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this Part.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of $436,200, or so much thereof as may be necessary for fiscal year 1999-2000, and the same sum, or so much thereof as may be necessary for fiscal year 2000-2001, to provide funds to the University of Hawaii to implement programs pursuant to the millennium workforce development program. The sums appropriated shall be expended by the University of Hawaii for the purposes of this Part.

PART VI

SECTION 15. The legislature finds that students must be afforded opportunities in new educational technologies, such as the E Academy concept, that will provide relevant, challenging, and meaningful course offerings for students interested in pursuing a career in advanced technology fields. The purpose of this Part is to provide Hawaii's students with meaningful and relevant preparation for immediate opportunities in entry level technology positions and advanced studies in post secondary information technology, science, engineering, and math.

SECTION 16. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§302A- E-mail accounts for students.** (a) The department of education, in conjunction and coordination with the University of Hawaii, shall provide e-mail accounts at no charge to any student who applies to the department for such an account.

(b) As used in this section, the term "student" means any person attending public school in ninth grade or above, including:

(1) Both degree and nondegree candidates;
(2) Individuals attending school on a full-time, part-time, or occasional basis, including continuing education or other nondegree courses;
(3) Individuals in educational, technical, or vocational programs; and
(4) Individuals attending public undergraduate or postgraduate college and university programs.

(c) The department of education, in cooperation with the University of Hawaii, shall adopt rules pursuant to chapter 91 as may be necessary to implement this section."

SECTION 17. (a) The department of education shall establish E Academies throughout the State with onsite locations based at selected public high schools in each departmental school district. The department of education shall also develop new challenging high school course offerings in math, science, and technology content areas and include the new courses in the authorized course code and number guide, for the purposes of the E Academies. The department of education shall provide an innovative training program for E Academy teachers, and conduct instructional assessment activities beginning in the 1999-2000 school year. In carrying out the duties of this section, the department of education shall seek and utilize any available funding sources, including grant moneys.

(b) As used in this section, "E Academy" means a virtual, site-based school that provides students with industry and academic standards-based instruction and assessments in technology, science, math, and engineering.

SECTION 18. Section 226-107, Hawaii Revised Statutes, is amended to read as follows:

"**§226-107 Quality education.** Priority guidelines to promote quality education:

(1) Pursue effective programs which reflect the varied district, school, and student needs to strengthen basic skills achievement[.];
(2) Continue emphasis on general education "core" requirements to provide common background to students and essential support to other university programs[.];
(3) Initiate efforts to improve the quality of education by improving the capabilities of the education work force[.];
(4) Promote increased opportunities for greater autonomy and flexibility of educational institutions in their decisionmaking responsibilities[.];
(5) Increase and improve the use of information technology in education [and encourage] by the availability of telecommunications equipment for:
    (A) The electronic exchange of information;
    (B) Statewide electronic mail; and
    (C) Access to the Internet.
    Encourage programs [which] that increase the public's awareness and understanding of the impact of information technologies on our lives[.];
(6) Pursue the establishment of Hawaii's public and private universities and colleges as research and training centers of the Pacific[.];
(7) Develop resources and programs for early childhood education[.];
(8) Explore alternatives for funding and delivery of educational services to improve the overall quality of education[.]; and
(9) Strengthen and expand educational programs and services for students with special needs."

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of $163,800, or so much thereof as may be necessary for fiscal year 1999-2000, and the same sum, or so much thereof as may be necessary for fiscal year 2000-2001, to provide funds for the establishment of E Academies statewide at selected schools in each of the departmental school districts. The sums appropriated shall be expended by the department of education for the purposes of section 17.

PART VII

SECTION 20. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235-A Stock options from qualified high technology businesses exempt from taxation.** (a) Notwithstanding any law to the contrary, all income received from stock options from a qualified high technology business by an employee that would otherwise be taxed as ordinary income or as capital gains to those employees is exempt from taxation under this chapter.

(b) For the purposes of this section:

"Computer software" means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Qualified high technology business" means a business performing qualified research. The term "qualified high technology business" does not include:

(1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services;

(2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
(3) Any business operating a hotel, motel, restaurant, or similar business; and
(4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:
(1) The same as in section 41(d) of the Internal Revenue Code; or
(2) Developing, designing, modifying, programming, and licensing computer software."

PART VIII

SECTION 21. The legislature finds that there is a need to encourage the creative community in Hawaii in order to support Hawaii's growth in the high technology business sector. The legislature further finds that exempting both individuals and high technology businesses from taxes on royalties received from copyrights and patents will help to encourage this creative community, which in turn will help produce its own synergy to foster electronic commerce in Hawaii. The purpose of this part is therefore to exempt individuals and qualified high technology businesses in Hawaii from taxation on royalties owned by those individuals or businesses and developed or arising out of those businesses.

SECTION 22. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235-B Royalties and other income from high technology business excluded from gross income.** (a) In addition to the exclusions in section 235-7, there shall be excluded from gross income, adjusted gross income, and taxable income, amounts received by an individual or a qualified high technology business as royalties and other income derived from patents and copyrights:
(1) Owned by the individual or qualified high technology business; and
(2) Developed and arising out of a qualified high technology business.

(b) For the purposes of this section:

"Computer software" means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Qualified high technology business" means a business performing qualified research. The term "qualified high technology business" does not include:
(1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services;
(2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable

under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;

(3) Any business operating a hotel, motel, restaurant, or similar business; and

(4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:

(1) The same as in section 41(d) of the Internal Revenue Code; or

(2) Developing, designing, modifying, programming, and licensing computer software."

PART IX

SECTION 23. While the advantages of Hawaii's proximity to Pacific and Asian markets are a lure for technology business in Hawaii, the costs of doing business are high. The purpose of this Part is to assist in the creation of opportunities for high technology companies through the creation of tax credits for investing in high technology businesses and for increasing research activities.

SECTION 24. Chapter 235, Hawaii Revised Statutes, is amended by adding to part VI a new section to be appropriately designated and to read as follows:

"**§235-C High-technology business investment tax credit.** (a) There shall be allowed to each taxpayer, subject to the taxes imposed by this chapter, a high technology investment tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The tax credit shall be an amount equal to ten per cent of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit of $500,000 for the taxable year for the investment made by the taxpayer in a qualified high technology business.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this section, "net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

(c) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims, including any amended claims, for tax credits under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) As used in this section:

"Computer software" means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Investment" means a nonrefundable investment, at risk, as that term is used in section 465 (with respect to deductions limited to amount at risk) of the Internal Revenue Code, in a qualified high technology business, of cash that is transferred to the qualified high technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships, joint

ventures, or other entities, licenses (exclusive or nonexclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein. The nonrefundable investment is entirely at risk of loss where repayment depends upon the success of the qualified high technology business. If the money invested is to be repaid to the taxpayer, no repayment except for dividends or interest shall be made for at least three years from the date the investment is made. The annual amount of any dividend and interest payment to the taxpayer shall not exceed twelve per cent of the amount of the investment.

(b)[1] For the purposes of this section:

"Qualified high technology business" means:

(1) A business, employing or owning capital or property, or maintaining an office, in this State; and which

(2) (A) Conducts one hundred per cent of its activities in performing qualified research in this State; or

(B) Receives one hundred per cent of its gross income derived from qualified research; provided that the income is received from products sold from, manufactured, or produced in the State; or services performed in this State.

The term "qualified high technology business" does not include:

(1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services;

(2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;

(3) Any business operating a hotel, motel, restaurant, or similar business; and

(4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:

(1) The same as in section 41(d) of the Internal Revenue Code; or

(2) Developing, designing, modifying, programming, and licensing computer software;

except that it shall not include research conducted outside the State.

(e)[1] This section shall not apply to taxable years beginning after December 31, 2005."

SECTION 25. Chapter 235, Hawaii Revised Statutes, is amended by adding to part VI a new section to be appropriately designated and to read as follows:

"**§235-D Tax credit for increasing research activities.** (a) Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section.

(b) All references to Internal Revenue Code sections within sections 41 and 280C(c) of the Internal Revenue Code shall be operative for purposes of this section.

(c) There shall be allowed to each taxpayer, subject to the tax imposed by this chapter, an income tax credit for increased research activities that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(d) The tax credit for increased research activities shall be equal to the sum of:

(1) 2.5 per cent of the excess (if any) of:
  (A) The qualified research expenses for the taxable year; over
  (B) The base amount;
  and

(2) 2.5 per cent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code.

(e) For purposes of this section:

(1) The alternative incremental credit in section 41(c)(4) of the Internal Revenue Code shall be equal to the sum of 12.5 per cent of:
  (A) 1.65 per cent of so much of the qualified research expenses for the taxable year as exceeds one per cent of the average described in section 41(c)(1)(B) but does not exceed 1.5 per cent of such average;
  (B) 2.2 per cent of so much of those expenses as exceeds 1.5 per cent of the average but does not exceed two per cent of the average; and
  (C) 2.75 per cent of so much of those expenses as exceeds two per cent of the average;

(2) The term "qualified research" under section 41(d)(1) of the Internal Revenue Code shall not include research conducted outside of the State; and

(3) The term "basic research" under section 41(e) of the Internal Revenue Code shall not include research conducted outside of the State.

(f) The amount of reduced credit in section 280C(c)(3)(B) of the Internal Revenue Code shall be equal to the excess of:

(1) The amount of credit determined under section 41(a) (as provided for in this section) (without regard to this paragraph); over

(2) The product of:
  (A) The amount described in subsection (f)(1); and
  (B) 12.5 per cent of the maximum rate of tax under section 11(b)(1) of the Internal Revenue Code.

(g) If the tax credit for increased research activities claimed by a taxpayer exceeds the amount of income tax payment due from the taxpayer, the excess of the tax credit over payments due may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

(h) All claims for a tax credit under this section must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly claim the credit shall constitute a waiver of the right to claim the credit.

(i) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section.

(j) This section shall not apply to taxable years beginning after December 31, 2005."

SECTION 26. Chapter 241, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§241- **High-technology business investment tax credit.** The high-technology business investment tax credit provided under section 235-C shall be operative for this chapter on the effective date of this Act."

SECTION 27. Chapter 431, article 7, part II, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§431:7- **High-technology business investment tax credit.** The high-technology business investment tax credit provided under section 235-C shall be operative for this chapter on the effective date of this Act."

SECTION 28. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

(1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 1(h)(3) (relating to net capital gain reduced by the amount taken into account as investment income), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-D, 235-110.7, and 235-110.8;
(2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
(3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);
(4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
(5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
(6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
(7) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
(8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
(9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
(10) Section 196 (with respect to deduction for certain unused investment credits);
(11) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
(12) Section 280C (with respect to certain expenses for which credits are allowable)[;]. For treatment see, section 235-D;
(13) Section 291 (with respect to special rules relating to corporate preference items);
(14) Section 367 (with respect to foreign corporations);
(15) Section 501(c)(12), (15), (16) (with respect to exempt organizations);
(16) Section 515 (with respect to taxes of foreign countries and possessions of the United States);

(17) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
(18) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
(19) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
(20) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
(21) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
(22) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
(23) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
(24) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
(25) Section 1055 (with respect to redeemable ground rents);
(26) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
(27) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
(28) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations); and
(29) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E."

PART X

SECTION 29. In codifying the new sections added by this Act, the revisor of statutes shall substitute the appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 30. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 31. This Act shall take effect upon its approval; provided that:
(1) Sections 4, 10, 13, 14, and 19 of this Act shall take effect on July 1, 1999;
(2) Sections 9, 20, 22, 25, and 28 of this Act shall apply to taxable years beginning after December 31, 1999; and
(3) Section 24 of this Act shall apply to taxable years beginning after December 31, 1998, for investments made pursuant to section 235-C, Hawaii Revised Statutes, on or after the effective date of this Act.

(Approved July 1, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 179 H.B. NO. 971

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Wahiawa General Hospital, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility and thereby serves the public.

The legislature further finds that Wahiawa General Hospital, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $37,000,000, in one or more series, for the purpose of assisting Wahiawa General Hospital, Inc., a not-for-profit Hawaii corporation, or a Hawaii nonprofit affiliate of Wahiawa General Hospital, Inc., with financing, refinancing, or both, of one or more of the following:

(1) Retirement of outstanding debt on existing health care facilities;
(2) Retirement of outstanding debt on existing capital equipment used in connection with the existing facilities;
(3) Acquisition or leasing of land for a new facility;
(4) Plans, design, construction, and operation of a new health care facility;
(5) Acquisition and installation of additional capital equipment for use in connection with Wahiawa General Hospital, Inc., facilities; or
(6) Renovation or repair of existing health care facilities.

The legislature finds and determines that the activities and facilities of Wahiawa General Hospital, Inc., and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

ACT 180 H.B. NO. 972

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Wahiawa-Central Oahu Health Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility, and thereby serves the public.

The legislature further finds that Wahiawa-Central Oahu Health Center, Inc., is engaged in the planning, design, and construction of a patient-focused facility that includes but is not limited to the following:

(1) Outpatient diagnostics facilities;
(2) Emergency room facilities with observation beds; and
(3) An ambulatory surgical unit.

The legislature further finds that Wahiawa-Central Oahu Health Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $40,000,000, in one or more series, for the purpose of assisting Wahiawa-Central Oahu Health Center, Inc., a not-for-profit Hawaii corporation, or a Hawaii nonprofit affiliate of Wahiawa-Central Oahu Health Center, Inc., with financing one or more of the following:

(1) Acquisition or leasing of land for a new facility;
(2) Planning, design, construction, and operation of a new health care facility; or
(3) Acquisition and installation of additional capital equipment for use in connection with Wahiawa-Central Oahu Health Center, Inc., facilities.

The legislature finds and determines that the activities and facilities of Wahiawa-Central Oahu Health Care, Inc., and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

ACT 181 H.B. NO. 973

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Sports Medicine & Research Center Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility and thereby serves the public.

The legislature further finds that Pacific Sports Medicine & Research Center, Inc., is engaged in the planning, design, and construction of a patient-focused facility.

The legislature further finds that Pacific Sports Medicine & Research Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $30,000,000, in one or more series, for the purpose of assisting Pacific Sports Medicine & Research, Inc., a not-for-profit Hawaii corporation, or a Hawaii nonprofit affiliate of same, with financing one or more of the following:

(1) Acquisition or leasing of land for a new facility;
(2) Planning, design, construction, and operation of a new health care facility; or
(3) Acquisition and installation of additional capital equipment for use in connection with Pacific Sports Medicine & Research Center, Inc., facilities.

The legislature finds and determines that the activities and facilities of Pacific Sports Medicine & Research Center, Inc., and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

ACT 182

S.B. NO. 1144

A Bill for an Act Relating to Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 241-7, Hawaii Revised Statutes, is amended to read as follows:

"**§241-7 Disposition of funds.** All taxes collected under this chapter shall be state realizations[.]; provided that, by June 30 of each fiscal year, the sum of $2,500,000 shall be deposited with the director of finance to the credit of the compliance resolution fund as established pursuant to section 26-9(o)."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

ACT 183

H.B. NO. 4

A Bill for an Act Relating to Police Roadblock Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In State v. Fedak, 9 Haw. App. 98 (1992), the Hawaii intermediate court of appeals ruled that internal police roadblock procedures exceeding the minimum statutory roadblock requirements, as set out in section 286-162.6, Hawaii Revised Statutes (HRS), must be "scrupulously" followed and that failure to do so will result in a determination that motor vehicles stopped at such a roadblock have been improperly seized. The legislature finds and declares that it did not intend this

outcome in enacting sections 286-162.5 and 286-162.6 of the Hawaii Revised Statutes. Accordingly, the purpose of this Act is to clarify that, in the case of internal police procedures that do not fall within the definition of "rule" under section 91-1(4), failure to comply scrupulously with such internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section 286-162.6.

SECTION 2. Section 286-162.5, Hawaii Revised Statutes, is amended to read as follows:

"**§286-162.5 Authorization to establish intoxication and drug control roadblock programs.** The police departments of the respective counties are authorized to establish and implement intoxication and drug control roadblock programs in accordance with the minimum standards and guidelines provided in section 286-162.6. The chief of police in any county establishing an intoxication and drug control roadblock program pursuant to this section shall specify the procedures to be followed in carrying out the program in rules adopted under chapter 91; provided that the procedures shall be in conformity with and not more intrusive than the standards and guidelines described in section 286-162.6. In the case of internal police procedures that do not fall within the definition of "rule" under section 91-1(4), failure to comply scrupulously with such internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section 286-162.6."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 184 H.B. NO. 7

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291-34, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Length:

(1) No single motor vehicle or other power vehicle having a total overall length greater than forty-five feet, including load, shall be operated or moved upon any public road, street, or highway within the State, except as [hereinafter] provided[;] in this subsection;

(2) No truck-tractor and semitrailer having a total overall length greater than [sixty] sixty-five feet, including load, shall be operated or moved upon any public road, street, or highway, other than interstate highways and certain qualifying federal aid highways as designated by the director of transportation, within the State, except as [hereinafter] provided[;] in this subsection; provided that [for]:

(A) For truck-tractors and semitrailers used for agricultural purposes, public utilities maintenance and service vehicles, or articulated buses for public transit purposes, the total combined length of the

truck-tractor and semitrailer, public utility maintenance and service vehicle, or articulated bus shall not exceed sixty-five feet in length; [provided further that the] and

(B) The length of the semitrailer shall not exceed [forty-five] forty-eight feet in length;

(3) No combination of motor vehicles or other power vehicles coupled together shall consist of more than two units and no such combination of vehicles having a total overall length greater than sixty-five feet, including load, shall be operated or moved upon any public road, street, or highway other than interstate highways and certain qualifying federal aid highways as designated by the director of transportation, within the State, except as [hereinafter] provided[.] in this subsection. A truck-tractor and semitrailer shall be regarded as a single unit when determining the number of units in a combination;

(4) No motor vehicle, self-propelled construction or farm equipment, trailer, or semitrailer shall be operated upon any public road, street, or highway within the State if it is carrying or otherwise has projecting to the front or rear, a load, boom, mast, or other projecting structure or attachment unless:

(A) With respect to self-propelled construction or farm equipment:

(i) The length of the equipment measured on a horizontal axis, including the projection, is not greater than forty-five feet;

(ii) The projection is either held securely in place or is controlled by the driver or an operator;

(iii) The projection does not obstruct the driver's vision;

(iv) The projection does not impair the driver's ability to control the equipment;

(v) The projection beyond the front tires is at least seven feet above the roadway surface; and

(vi) The projection does not extend more than four feet past the extremity of the piece of equipment, or if it extends more than four feet, an escort vehicle is provided by the owner or operator either to the front or to the rear of the projection to call attention to the projection; or

(B) With respect to a motor vehicle, or a motor vehicle with attached trailer or semitrailer:

(i) The overall length of a motor vehicle including the projection, is not greater than forty-five feet or the overall length of the motor vehicle with attached trailer or semitrailer, including the projection, is not greater than sixty feet except that this limitation on a motor vehicle with attached trailer or semitrailer, including the projection, shall not be applicable on interstate highways and certain qualifying federal aid highways, as designated by the director of transportation;

(ii) The projection is either held securely in place or is controlled by the driver or an operator;

(iii) The projection does not obstruct the driver's vision;

(iv) The projection does not impair the driver's ability to control the equipment;

(v) The projection beyond the front tires is at least seven feet above the roadway surface; and

(vi) The projection does not extend more than four feet past the extremity of the trailer or semitrailer, or, if it extends more than four feet, an escort vehicle is provided by the owner or

operator either to the front or to the rear of the projection to call attention to the projection;

(5) The [foregoing] limitations in this subsection upon length shall not apply to vehicles transporting pipe, poles, timbers, reinforcing steel, structural steel, or other objects of a structural nature which cannot be readily dismembered; provided that when transported by night every such vehicle shall be equipped with a sufficient number of clearance lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 185 H.B. NO. 77

A Bill for an Act Relating to Real Property Encroachment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that this Act represents a collaborative effort among licensed land surveyors, title and escrow companies, and the real estate community in Hawaii at clarifying the existing law on real property encroachments.

The purpose of this Act is to adopt cost-efficient, time-saving methods to resolve relatively minor structure position discrepancies, including those situated on industrial property, and without regard to the date at which such discrepancies arise. The legislature recently enacted a structure position discrepancies law. However, that law applies only to discrepancies that existed on June 16, 1997. The problem with the law is that applicability turns upon the date of construction of the encroaching structure, which often is indeterminable due to the lack of documentation. This ambiguity renders the law unusable in many situations. The legislature believes that the removal of the retroactive date of that law will allow that law to be implemented. Furthermore, the requirement that the structures be otherwise "legally constructed" forecloses the possibility that the law, without any temporary restrictions as to its applicability, will be used to promote or encourage future, intentional encroachments.

SECTION 2. Section 669-11, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§669-11[]] De minimus structure position discrepancies, defined.** For the purposes of this part, "de minimus structure position discrepancy" means:

(1) For commercial property, industrial property, and multi-unit residential property, 0.25 feet;
(2) For all other residential property, 0.5 feet;
(3) For agricultural and rural property, 0.75 feet; and
(4) For conservation property, 1.5 feet;

between the location of an improvement legally constructed along what was reasonably believed to be the boundary line and the actual location of the boundary line based on [a modern] the most recent survey."

SECTION 3. Section 669-12, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§669-12[]] Consequences.**

(1) A de minimus structure position discrepancy shall not be considered an encroachment or a basis for a zoning violation;

(2) No de minimus structure position discrepancy authorized under this part shall be considered as a basis for any claim of adverse possession of land. If the wall or other improvement that is affected by the discrepancy is removed or substantially damaged or destroyed, the replacement improvement shall be constructed to comply with the most recent survey available at the time of construction of the improvement;

(3) Responsibility for maintenance and repair of an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement[,] or the property owner's successor in interest; [and]

(4) Liability for any claims for injuries or damages to persons or property arising out of, or in connection with, an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement[,] or the property owner's successor in interest[.]; and

(5) In the event that the property owner who constructed the improvement within a de minimus structure position discrepancy is not readily identifiable, then for purposes of this part, the owner of the improvement shall be determined to be the owner of the property upon which the improvement is substantially located."

SECTION 4. Act 131, Session Laws of Hawaii 1997, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall apply to all structure position discrepancies [in effect on its effective date] without regard to when the facts or actions giving rise to the discrepancy occurred."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall take effect retroactive to June 16, 1997.

(Approved July 2, 1999.)

ACT 186 H.B. NO. 138

A Bill for an Act Relating to Agricultural Goods.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to establish a means of identifying the owner of large lots of picked fruits, nuts, or vegetables of any tree, vine, or plant, or large lots of shrimps, prawns, shell fish, fish, seaweed, algae, and other aquaculture products, or large lots of flowers, ornamentals, or other horticultural products to give law enforcement officers an additional means of identifying the lawful owners

of these agricultural commodities and to assist in the prevention of theft of these commodities.

SECTION 2. Chapter 145, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART II. OWNERSHIP AND MOVEMENT OF AGRICULTURAL COMMODITIES

§145- **Definition.** For purposes of this part, "agricultural commodity" means any fruit, nut, or vegetable that is the food product of any tree, vine, or plant, or any aquacultural, horticultural, or floricultural product.

§145- **Agricultural commodities; ownership and movement certification.** Every owner, upon sale or transportation of lots of over two hundred pounds or with a value of at least $100, of any agricultural commodity that is marketed for commercial purposes, shall complete a certificate describing the commodity and indicating:

(1) The seller, owner, buyer, or consignee;
(2) The origin; and
(3) The destination.

Two copies of the certificate shall accompany the shipment and a copy shall be retained by the owner. One of the copies of the certificate shall be presented upon request to a state or county law enforcement officer or other officer or employee as described in section 145-

§145- **Lack of proof of ownership as a violation.** The failure of any person who sells, transports, or possesses after sale or transport, agricultural commodities in lots of over two hundred pounds or with a value of at least $100, to maintain a certificate of ownership or other written proof of ownership that describes the commodity is a violation of this part.

§145- **Authorization to inspect.** Every law enforcement officer or other officer or employee as described in section 145- having probable cause to believe that the possession, sale, or transportation of agricultural commodities is unlawful, may take reasonable steps to detain the person having possession, selling, or transporting the agricultural commodities and request from the person being detained proof of ownership of the commodities.

§145- **Enforcement; citation and summons.** Violations of this part or any rule adopted pursuant thereto may be enforced by citation and summons issued by:

(1) Any state or county law enforcement officer; or
(2) Any officer or employee of the department of agriculture, authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.

§145- **Form of citation and summons.** (a) In issuing citations and summons for violations of this part, state and county law enforcement officers shall use the summons and complaint citation books issued by the judiciary for violations of the traffic code.

(b) Citations issued by officers and employees as described in section 145- (2) shall use citation and summons forms that shall warn the person to

appear and answer the charge against the person at a place and at a time within thirty days after the citation.

The citation and summons shall be in a form that allows a carbon copy to be provided to the accused. The district courts may provide for the disposition of the original and any other copies. Every citation and summons shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

§145- Authorization to seize and hold commodities; disposition. (a) In addition to the issuance of a citation and summons, upon reasonable belief that the person is in unlawful possession of agricultural commodities a law enforcement officer or other officer or employee as described in section 145- shall be authorized to hold the agricultural commodity for not longer than forty-eight hours to investigate and ascertain the ownership of the agricultural commodity. If the lawful owner is determined and located, the agricultural, aquacultural, or horticultural commodity shall be released to the lawful owner.

(b) If for any reason the agricultural commodity is not released to the lawful owner after being in the custody of the law enforcement officer or other officer or employee as described in section 145- for forty-eight hours, or less in the case of highly perishable commodities, the commodity may be sold at fair market value to any retailer, wholesaler, or packer of the commodity. All of the proceeds derived from the sale shall be held by the law enforcement officer or other officer or employee as described in section 145- for not longer than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The owner may be held responsible for any costs and expenses that may be incurred by the law enforcement officer or other officer or employee as described in section 145- . Any proceeds of sale not recovered within six months for lack of a claim or for insufficient proof shall be treated as unclaimed property of the State.

(c) Any commodity that remains unsold after being offered for sale pursuant to this section may be donated to a nonprofit charitable organization or destroyed at the discretion of the law enforcement officer or other officer or employee as described in section 145-

§145- Administration of oath. When a complaint is made by officers and employees as described in section 145- (2) to any prosecuting officer of the violation of this part or of any rules adopted pursuant thereto, the officer or employee who issued the citation and summons shall subscribe to it under oath administered by another official of the department whose name has been submitted to the prosecuting officer and who has been designated by the chairperson of the board of agriculture to administer the oaths."

SECTION 3. Chapter 145, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"CHAPTER 145
REGULATION OF [DEALERS IN] FARM PRODUCE"

SECTION 4. Chapter 145, Hawaii Revised Statutes, is amended by designating sections 145-1 to 145-15 as part I and inserting a title before section 145-1 to read as follows:

"PART I. REGULATION OF DEALERS"

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 187 H.B. NO. 165

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-191, Hawaii Revised Statutes, is amended by adding a new definition to read as follows:

""Political committees established and maintained by a national political party" means:

(1) The National Committee;
(2) The House Campaign Committee; and
(3) The Senate Committee."

SECTION 2. Section 11-191, Hawaii Revised Statutes, is amended by amending the definition of "contribution" to read as follows:

""Contribution" means:

(1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers for the purpose of:
    (A) Influencing the nomination for election, or election, of any person to office;
    (B) Influencing the outcome of any question or issue that appears or is reasonably certain to appear on the ballot at the next applicable election described in subparagraph (A); or
    (C) Use by any party or committee for the purposes set out in subparagraph (A) or (B);
(2) The payment, by any person, political party, or any other entity other than a candidate or committee, of compensation for the personal services or services of another person [which] that are rendered to the candidate or committee without charge or at an unreasonably low charge for the purposes set out in paragraph (1)(A), (1)(B), or (1)(C);
(3) A contract, promise, or agreement to make a contribution; provided that notwithstanding this paragraph and paragraphs (1) and (2), the term "contributions" shall not include services or portions thereof voluntarily provided without reasonable compensation by individuals to or in behalf of a candidate or committee; or
(4) Notwithstanding paragraphs (1), (2), and (3), a candidate's expenditure of the candidate's own funds or the making of a loan or advance in the pursuit of the candidate's campaign shall not be a contribution for the purpose of this subpart but shall nevertheless be reportable as a campaign receipt."

SECTION 3. Section 11-204, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) No person, political party, political committees established and maintained by a national political party, or any other entity shall make contributions to:

(1) A candidate seeking nomination or election to a two-year office or to the candidate's committee in an aggregate amount greater than $2,000 during an election period; [and]

(2) A candidate seeking nomination or election to a four-year statewide office or to the candidate's committee in an aggregate amount greater than $6,000 during an election period; and

(3) A candidate seeking nomination or election to a four-year nonstatewide office or to the candidate's committee in an aggregate amount greater than $4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business."

2. By amending subsection (f) to read:

"(f) All payments made by a person or political party whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, political committees established and maintained by a national political party, or any other person, or by any group of those persons shall be considered to be made by a single person[.] or political party."

3. By amending subsection (1) to read as follows:

"(1) No person or any other entity other than political committees established and maintained by a national political party shall make contributions to a political party in an aggregate amount greater than [$50,000] $25,000 in any two-year election period. No political committee established and maintained by a national political party, shall make contributions to a political party in an aggregate amount greater than $50,000 in any two year election period."

SECTION 4. Section 11-205, Hawaii Revised Statutes, is amended to read as follows:

"§11-205 Campaign contributions; limits as to political parties. [(a) No political party shall make contributions to a candidate in any calendar year in an aggregate amount greater than the following amounts for each respective office:

(1) For the office of governor—$50,000;

(2) For the office of lieutenant governor—$40,000;

(3) For the partisan offices of mayor and prosecuting attorney—$25,000;

(4) For the offices of state senator and partisan county council member—$20,000; and

(5) For the office of state representative—$15,000.

(b) For the purposes of this section, a] A contribution to a political party which is earmarked for a particular candidate or candidates shall be promptly distributed to such candidate and shall be reported by the candidate upon receipt as an individual contribution. Earmarked funds contributed pursuant to this section shall be counted:

(1) Toward the contribution limit of the political party donating such funds to a candidate or candidates; and

(2) Toward the contribution limit of the person or persons contributing such earmarked funds."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 188 H.B. NO. 1008

A Bill for an Act Relating to Tobacco Liability.

Be It Enacted by the Legislature of the State of Hawaii:

Section 1. The Hawaii Revised Statutes is amended by adding new chapter to be appropriately designated and to read as follows:

"CHAPTER
TOBACCO LIABILITY ACT

§ **-1 Findings and purpose.** (a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§ **-2 Definitions.** (a) ''Adjusted for inflation'' means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) ''Affiliate'' means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms ''owns,'' ''is owned'' and ''ownership'' mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term ''person'' means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) ''Allocable share'' means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) ''Cigarette'' means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term ''cigarette'' includes ''roll-your-own'' (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of ''cigarette,'' 0.09 ounces of ''roll-your-own'' tobacco shall constitute one individual ''cigarette.''

(e) ''Master Settlement Agreement'' means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(f) ''Qualified escrow fund'' means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 3(b) of this Act.

(g) ''Released claims'' means Released Claims as that term is defined in the Master Settlement Agreement.

(h) ''Releasing parties'' means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) ''Tobacco product manufacturer'' means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term ''Tobacco Product Manufacturer'' shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.

(j) ''Units sold'' means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or ''roll-your-own'' tobacco containers) bearing the excise tax stamp of the State. The Department of the Attorney General shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

§ **-3 Requirements.** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—
1999: $.0094241 per unit sold after the date of enactment of this Act;
2000: $.0104712 per unit sold;
for each of 2001 and 2002: $.0136125 per unit sold;
for each of 2003 through 2006: $.0167539 per unit sold;
for each of 2007 and each year thereafter: $.0188482 per unit sold.

(2) a tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been

a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the State in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

The State shall be awarded its attorneys' fees and expenses incurred in prosecuting violations of this chapter."

SECTION 2. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 189 H.B. NO. 1017

A Bill for an Act Relating to the Housing Loan and Mortgage Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that under the Hula Mae single family mortgage purchase program, the housing and community development corporation of Hawaii is authorized to issue tax-exempt mortgage revenue bonds and make funds available through mortgage lenders at affordable interest rates to households with

low to moderate incomes. As of June 30, 1998, over eight thousand first-time home buyers have been provided mortgages through the Hula Mae program. In 1997 and 1998, lenders and private developers requested over $1,000,000,000 of Hula Mae funds, yet only approximately $283,000,000 was actually available for lending.

The legislature finds that authorizing the issuance of additional revenue will assist the Hula Mae program.

The purpose of this Act is to authorize the housing and community development corporation of Hawaii to issue up to $2,275,000,000 in tax-exempt revenue bonds for the Hula Mae single family mortgage purchase program.

SECTION 2. Section 7 of Act 50, Session Laws of Hawaii 1979, as amended by section 3 of Act 288, Session Laws of Hawaii 1980, section 2 of Act 13, First Special Session Laws of Hawaii 1981, section 1 of Act 224, Session Laws of Hawaii 1984, section 1 of Act 171, Session Laws of Hawaii 1991, and section 1 of Act 1, Special Session Laws of Hawaii 1995, is amended to read as follows:

"SECTION 7. **Issuance of revenue bonds; amount authorized.** Revenue bonds may be issued by the housing [fin] and community development corporation of Hawaii pursuant to part III, chapter 39, and subpart B of part [II] III of chapter [201E,] 201G, Hawaii Revised Statutes, in an aggregate principal amount not to exceed [$1,775,000,000] $2,275,000,000 at such times and in such amounts as it deems advisable for the purpose of undertaking and maintaining any of its housing loan programs in subpart B of part [II] III of chapter [201E,] 201G, Hawaii Revised Statutes, relating to the funding or purchasing of eligible loans."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 190 H.B. NO. 1086

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-1128, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall regulate the courses of study to be pursued in all grades of public schools and classify them by methods the department deems proper; provided that:

(1) The course of study and instruction [in the first eight grades] shall be [so] regulated [that not less than fifty per cent of the study and instruction in each school day is devoted to the oral expression, the written composition, and the spelling of the English language, except for special projects using the Hawaiian language as approved by the board;] in accordance with the statewide performance standards established under section 302A-201;

(2) All pupils shall be progressively competent in the use of computer technology; and

(3) The course of study and instruction for the first twelve grades shall enable all students to meet progressive standards of competency in a language in addition to English.

For the purposes of this subsection, the terms "progressively competent in the use of computer technology" and "progressive standards of competency in a language in addition to English" shall be defined by the board through rules adopted pursuant to chapter 91, with reference to relevant national or international standards of competency. Notwithstanding paragraphs (2) and (3) to the contrary, the board, through rules adopted pursuant to chapter 91, shall formulate statewide educational policies allowing the superintendent to exempt certain students from the requirements of paragraphs (2) and (3)."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 191 H.B. NO. 1095

A Bill for an Act Relating to the Review of the Salaries of the Trustees of the Office of Hawaiian Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 358, Session Laws of Hawaii 1993, established a process for the periodic review of the salaries of the trustees of the office of Hawaiian affairs. Beginning in 1996, and in four-year increments thereafter, the governor was directed to appoint members to a salary review commission on or before November 30. By the fortieth legislative day of the next regular legislative session, the salary review commission was directed to submit its recommendations for any salary adjustments to the legislature. Through inadvertence, the initial salary review commission was not appointed and the four-year review cycle was not initiated.

The purpose of this Act is to re-establish the salary review process for the trustees for the office of Hawaiian affairs.

SECTION 2. Section 10-9.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§10-9.5[]] Salary commission; established.** (a) There is established a salary commission for the members of the board of trustees for the office of Hawaiian affairs. The salary commission shall consist of seven members appointed by the governor on or before [November 30, 1996,] August 31, 1999, and every four years thereafter. The members of the salary commission shall be selected from nominations submitted by native Hawaiian organizations as defined in section 673-2(c). The members shall serve without compensation, but shall be entitled to reimbursement for necessary expenses while in the discharge of their duties and responsibilities.

(b) Before the [fortieth] twentieth legislative day of the [1997] regular session of 2000 and every four years thereafter, the salary commission shall study and make recommendations for the salary of the members of the board of trustees for the office of Hawaiian affairs, and then shall be dissolved. The recommended salary

shall be effective as of the date of the recommendations unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 192 H.B. NO. 1138

A Bill for an Act Relating to Epidemiologic Investigations.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The purpose of this part is to allow the department of health to update its ability to investigate significant causes of illness which threaten the public health and safety, while protecting the confidentiality of information and shielding the providers of information from liability.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§321- Epidemiologic investigations.** (a) The department may conduct investigations to determine the nature and extent of diseases and injuries deemed by the department to threaten the public health and safety.

(b) Every person, health care provider, and medical facility shall provide the patient's name, the name of a minor patient's parent or guardian, address, telephone number, age, sex, race or ethnicity, clinical signs and symptoms, laboratory test results, diagnostic interview data, treatment provided, and the disposition of the patient when requested by an authorized representative of the director for the purpose of conducting such an investigation. The authorized representative may only view the limited portion of the patient's medical record which is directly relevant in time and scope to the subject of the investigation.

(c) No person, health care provider, or medical facility that provides information requested by an authorized representative of the director for the purpose of conducting an investigation under this section shall be held civilly or criminally liable for providing that information to the department.

(d) All information provided to the department under this section shall be kept strictly confidential, except as the director determines is necessary to protect the public health and safety. Access to confidential records shall be restricted to those individuals specifically authorized to participate in any given investigation. However, epidemiologic and statistical information with no individual identifying information may be released to the public. The identities of individuals whose medical records are investigated shall be disclosed only to those persons authorized by the director or the director's representative to conduct a specific investigation under this section or determined by the director to be necessary to protect the health and safety of the public."

SECTION 3. Section 321-1, Hawaii Revised Statutes, is amended to read as follows:

"**§321-1 General powers and duties of the department.** (a) The department of health shall have general charge, oversight, and care of the health and lives of the people of the State.

(b) The department may conduct epidemiologic investigations of diseases and injuries that threaten or are deemed by the department to threaten the public health and safety.

[(b)] (c) The department shall have authority in matters of quarantine and other health matters and may declare and enforce quarantine when none exists and modify or release quarantine when it is established.

[(c)] (d) When it is determined that there is imminent danger of epidemic or serious outbreak of communicable disease, the department may refuse, modify, or limit attendance at any school in the State.

[(d)] (e) When in the judgment of the director, there is deemed to be a potential health hazard, the department, through the director, may take precautionary measures to protect the public through the imposition of an embargo or the detention of products regulated by the department, or the removal of products regulated by the department from the market, or the declaration of quarantine; provided that the director must find evidence of a health hazard within seventy-two hours of the action taken or rescind the action. The director shall make public the findings.

[(e)] (f) All county health authorities, sheriffs, police officers, and all other officers and employees of the State, and every county thereof, shall enforce the rules of the department. All such powers in health matters as have been or may be conferred upon any county shall be concurrent with those of the department.

[(f)] (g) The department may establish charges and collect fees for any of its services; provided that the department shall not refuse to provide services to any person due to the person's inability to pay the fee for the service. The department, through the director, shall make an annual report to the governor, showing in detail all its expenditures and transactions, and such other information regarding the public health as the department may deem of special interest.

[(g)] (h) The department, during the prevalence of any severe pestilence or epidemic, shall publish a weekly report of the public health.

[(h)] (i) The department shall establish and administer programs, and adopt rules as deemed necessary, for the prevention of domestic and sexual violence and the protection and treatment of victims of domestic and sexual violence."

PART II

SECTION 4. The purpose of this part is to appropriate funds for the department of health to conduct a response action, which shall include soil sample surveys as part of an epidemiologic investigation into the causes of an apparent disturbing and as yet unexplained pattern of physical and learning disabilities of children in the Village Park and West Loch Fairways communities.

The legislature finds that, as the population of the State grows, housing developments and residential areas are being constructed on former agricultural lands or on locations formerly used by the military. This situation is certain to increase as agriculture declines and additional lands become available for residential development. Environmental health hazards in the soil, such as residue from pesticides, can remain undetected until significant clusters of disease or illness are identified. Secret underground military facilities, such as tunnels or bunkers, in which were stored arms or chemicals, are also capable of causing environmental health hazards.

The legislature finds that significant clusters of illness or disease are not readily identifiable until some commonality occurs, such as proximate neighbors comparing notes or children of the same age level entering a single neighborhood school being enrolled in special education classes.

The legislature further finds that when a significant cluster or increase of illness or disease occurs in a school and is identified by the faculty, it should be the responsibility of the principal and faculty to report their suspicions to the department of health. The department of health, working in cooperation with the department of education, should be responsible for the related health services.

Of particular concern to the legislature is the Village Park and West Loch Fairways communities. Village Park is a subdivision of approximately two thousand families, and West Loch Fairways is a subdivision of approximately seven hundred twenty families, who share a common health phenomenon. Many of the Village Park and West Loch Fairway families and children have varying degrees of disabilities and illnesses that are more than coincidence. One out of ten children has some physical or learning disability, or both, that requires special needs education. Physical disabilities include Downs Syndrome, trisomy 8 and trisomy 18, spina bifida, heart abnormalities, leukemia, and respiratory ailments. Learning disabilities include mental retardation, hearing, emotional, visual, speech and language, attention deficit disorder, hyperactivity, oppositional defiant disorder, multiple handicaps, and autism.

The purpose of this part is to appropriate funds to the department of health to conduct soil testing for Village Park and West Loch Fairways as part of an epidemiologic investigation to determine if physical and learning disabilities of children are caused by the soil.

SECTION 5. There is appropriated out of the environmental response revolving fund under section 128D-2, Hawaii Revised Statutes, the sum of $220,000 or so much thereof as may be necessary for fiscal year 1999-2000 for the department of health to conduct a response action, which shall include soil testing at Village Park and West Loch Fairways to determine if the soil is a cause of the illnesses, and the physical and learning disabilities of children and families living in Village Park and West Loch Fairways. The testing shall be completed by December 15, 1999.

The sum appropriated shall be expended by the department of health.

SECTION 6. The department of health, with the assistance of the department of agriculture, Citizens for a Safe Environment, and Life of the Land, shall report its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2000.

PART III

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval; provided that section 5 shall take effect on July 1, 1999.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 193

H.B. NO. 1142

A Bill for an Act Relating to Environment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 340B, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"CHAPTER 340B
[HAWAII LAW FOR MANDATORY CERTIFICATION OF PRIVATE CESSPOOL PUMPING FIRMS AND OPERATING PERSONNEL IN WASTEWATER TREATMENT PLANTS] WASTEWATER TREATMENT PERSONNEL"

SECTION 2. Section 342D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"'"Management practices" include treatment, processing, storage, transport, use, and disposal."

SECTION 3. Section 342D-4, Hawaii Revised Statutes, is amended to read as follows:

"**§342D-4 Duties; rules.** In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate water pollution in the State and may control all management practices for domestic sewage, sewage sludge, and [reclaimed] recycled water, whether or not [such] the practices cause water pollution. [Such management practices include treatment, processing, storage, transport, use and disposal.] In the discharge of this duty, the director may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules."

SECTION 4. Section 342D-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that it will be in the public interest; provided that the permit may be subject to any reasonable conditions that the director may prescribe. The director may include conditions in permits or may issue separate permits for management practices for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution. [The management practices include treatment, processing, storage, transport, use, and disposal.] The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that it will be in the public interest. The director shall not grant or deny an application for the issuance or renewal of a permit without affording the applicant and any person who commented on the proposed permit during the public comment period an opportunity for a hearing in accordance with chapter 91. A request for a hearing[, a hearing,] and any judicial review of the hearing shall not stay the effect of the issuance or renewal of a permit unless specifically ordered by the director or a court."

SECTION 5. Section 342D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director, in accordance with law, may enter and inspect any building or place to [investigate]:

(1) Investigate an actual or suspected source of water pollution; [to investigate]

(2) Investigate actual or suspected management practices for domestic sewage, sewage sludge, and recycled water, whether or not [such] the practices cause water pollution; [to ascertain]

(3) Ascertain compliance or noncompliance with this chapter[;], any rule or standard adopted by the department pursuant to this chapter[;], or any permit or other approval granted by the department pursuant to this chapter; and [to make]

(4) Make reasonable tests in connection therewith.

[Management practices include treatment, processing, storage, transport, use, and disposal.]"

SECTION 6. Section 342D-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by the discharge of waste, any combination of discharges of waste, or any management practice that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop the discharge, or to reduce, stop, or change the management practice, and may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. [The management] Management practices covered in this subsection are those for domestic sewage, sewage sludge, and recycled water, whether or not [such] the practices cause water pollution[, and include treatment, processing, storage, transport, use, and disposal]."

SECTION 7. Section 342D-16, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§342D-16[] Other action not barred.] Remedies preserved.** No existing civil or criminal remedy for any wrongful action [which] that is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter. No existing civil or criminal remedy shall exclude or impair the remedies provided in this chapter."

SECTION 8. Section 342D-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person who violates this chapter, any rule, or any term or condition of a permit or variance issued pursuant to this chapter shall be fined not more than $25,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this section shall be considered a civil action. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of these violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and any other matters that justice

may require. It shall be presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof of the contrary is on the violator."

SECTION 9. Section 342D-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Factors to be considered in imposing an administrative penalty include:
(1) The nature, circumstances, extent, gravity, and history of the violation and of any prior violations;
(2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;
(3) The opportunity, difficulty, and history of corrective action;
(4) Good faith efforts to comply; [and]
(5) Degree of culpability; and
[(5)] (6) Such other matters as justice may require."

SECTION 10. Section 342D-55, Hawaii Revised Statutes, is amended to read as follows:

"**§342D-55 Recordkeeping and monitoring requirements.** [The director may require:
(1) Complete and detailed plans or reports, on existing works, systems, plants, or management practices, and of any proposed addition to, modification of, or alteration of any such works, systems, plants, or management practices, which contain the information requested by the director in the form prescribed by the director. Such plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner and
(2) The owner or operator of any effluent source, any discharger of effluent, or any person engaged in management practices to:
(A) Establish and maintain records;
(B) Make reports;
(C) Install, use, and maintain monitoring equipment or methods;
(D) Sample effluent, state waters, sewage sludge; and
(E) Provide such other information as the department may require.]

(a) The director may require the owner or operator of any effluent source, works, system, or plant; any discharger of effluent; the applicant for written authorization under this chapter for such sources or facilities; or any person engaged in management practices to:
(1) Establish and maintain records;
(2) Make reports and plans that shall cover existing situations and proposed additions, modifications, and alterations;
(3) Install, use, and maintain monitoring equipment or methods;
(4) Sample effluent, state waters, and sewage sludge; and
(5) Provide such other information as the department may require.

(b) The director may require that information and items required under subsection (a) be complete and detailed, in a prescribed form, made or prepared by a competent person acceptable to the director, and at the expense of the owner, operator, or applicant.

(c) [The management] Management practices covered in this section are those for domestic sewage, sewage sludge, and recycled water, whether or not such practices cause water pollution[, and include treatment, processing, storage, transport, use, and disposal]."

SECTION 11. Section 340B-21, Hawaii Revised Statutes, is repealed.

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. Rules adopted pursuant to the chapters being amended shall remain in effect until the rules are amended, repealed, or replaced.

SECTION 13. All acts passed by the legislature during the regular session of 1999, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act; unless such acts specifically provide that this Act is to be amended.

SECTION 14. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 194 H.B. NO. 1146

A Bill for an Act Relating to Vital Record Fees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 216, Session Laws of Hawaii 1997, is amended by amending section 13 to read as follows:

"SECTION 13. This Act shall take effect on July 1, 1997[, and shall be repealed on June 30, 2000; provided that any statutory or session law material in this Act in existence on June 30, 1997, shall be reenacted on July 1, 2000, in the same form in which it existed on June 30, 1997]."

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 195 H.B. NO. 1181

A Bill for an Act Relating to Aquatic Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§187A- Receipts and reports.** Any person who knowingly misrepresents any material fact or makes a false statement in any document required by

subtitle 5 of title 12, or any rule adopted thereunder, shall be guilty of a petty misdemeanor and punished as provided by law."

SECTION 2. Section 187A-6.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§187A-6.5[]] Release and confiscation of harmful aquatic life[; penalty].** (a) No person shall release any live non-native fish or other live non-native aquatic life being held in an aquarium or other confinement for scientific study, exhibition, display, sale, or for any other purpose, into any waters of the State, except as provided in section 187A-2(4).

(b) The department or its agents may seize, confiscate, or destroy, as a public nuisance, any fish or other aquatic life found in any waters of the State and whose importation is prohibited or restricted pursuant to rules of the department of agriculture.

[(c) Any person violating this section shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70.]"

SECTION 3. Section 187A-13, Hawaii Revised Statutes, is amended to read as follows:

"**§187A-13 General penalty.** (a) Any person violating [any of the provisions of] this chapter or any rule [of the department] adopted thereunder for which a penalty is not otherwise provided, shall be guilty of a petty misdemeanor and [upon conviction thereof shall be punished as provided by section 188-70.], in addition to any other penalties, shall be fined not less than:

(1) $250 for a first offense;
(2) $500 for a second offense; and
(3) $1,000 for a third or subsequent offense.

(b) The fines specified in this section shall not be suspended or waived."

SECTION 4. Section 187A-14, Hawaii Revised Statutes, is amended to read as follows:

"**§187A-14 Informer's fee.** One-half of the fine imposed and collected in all cases wherein the defendant has been convicted for a violation of [any of the provisions of this chapter] subtitle 5 of title 12 or any rule adopted thereunder shall be paid to the person giving the information leading to the arrest of the person so convicted; provided that this section shall not apply[,] if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden or constable, or officer or agent of the department."

SECTION 5. Section 187A-15, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§187A-15[]] Rights of inspection of catch.** Any agent of the department upon whom the board has conferred powers of police officers or any other enforcement officer of the State shall have the authority to conduct examinations and searches of:

(1) The contents of any bag or container of any kind used to carry aquatic life; or
(2) Any vehicle or conveyance used to transport aquatic life;

if such agent or officer has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of [the

fishing laws of the State.] subtitle 5 of title 12 or any rule adopted thereunder. No person shall refuse any enforcement officer of the department or any other enforcement officer of the State such examination and search."

SECTION 6. Section 188-70, Hawaii Revised Statutes, is amended to read as follows:

"**§188-70 Penalties.** (a) Any person violating any provision of this chapter, excepting section 188-23, or any rule adopted pursuant thereto, is guilty of a petty misdemeanor and [upon conviction thereof, shall be punished as follows:

(1) For a first conviction, by a fine of not more than $500, or by imprisonment of not more than thirty days, or both:
(2) For a second conviction within five years of a previous conviction by a fine not less than $100 nor more than $500, or by imprisonment of not more than thirty days, or both:
(3) For a third or subsequent conviction within five years of the first two or more convictions, by a fine of not less than $300 nor more than $500, or by imprisonment of not more than thirty days, or both.], in addition to any other penalties, shall be fined not less than:
(A) $100 for a first offense:
(B) $200 for a second offense; and
(C) $500 for a third or subsequent offense.

(b) Any person violating section 188-23, is guilty of a [misdemeanor and upon conviction thereof,] class C felony and shall be [punished as follows:

(1) For a first conviction by a fine of not more than $1,000, or by imprisonment of not more than one year, or both:
(2) For a second conviction within five years of a previous conviction, by a fine of not less than $250 nor more than $1,000 or by imprisonment of not more than one year, or both:
(3) For a third or subsequent conviction within five years of the first two or more convictions, by a fine of not less than $500 nor more than $1,000, or by imprisonment of not more than one year, or both.]

sentenced pursuant to chapter 706; provided that the court, in addition to any term of imprisonment or any other terms and conditions of probation, shall order the defendant to pay a fine of not less than $1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of subsection (b), as a first offense, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole for thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

(c) [In addition to the above penalties, for the first conviction a fine of up to $100 may be levied for each specimen of aquatic life taken or rock or coral broken or damaged illegally under this chapter; provided that for every subsequent conviction within five years of the first conviction, a fine of up to $100 shall be levied for each specimen of aquatic life taken or rock or coral broken or damaged illegally under this chapter.] The fines specified in this section shall not be suspended or waived."

SECTION 7. Section 189-4, Hawaii Revised Statutes, is amended to read as follows:

"**§189-4 Penalties.** [In addition to the revocation of a commercial marine license, any] (a) Any person violating any of the provisions of [sections 189-2 and 189-3] this chapter for which a penalty is not otherwise provided, or any rule of the department adopted thereunder, shall be guilty of a petty misdemeanor[, and upon conviction thereof, shall be fined not less than $25 nor more than $500, or impris-

oned not less than five nor more than thirty days, or both;] and punishable as provided in subsection (b); provided that in the case of a corporation violating any of the provisions only the fine shall be imposed, but any officer of the corporation who wilfully procures or permits the violation of the provisions by the corporation shall be [subject to fine and imprisonment, or both,] punishable as in the case of an individual violating the same.

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

(1) $250 for a first offense:

(2) $500 for a second offense:

(3) $1,000 for a third or subsequent offense.

(c) The fines specified in this section shall not be suspended or waived."

SECTION 8. Section 189-14, Hawaii Revised Statutes, is amended to read as follows:

"**§189-14 Rights of entry, penalties.** The department [of land and natural resources] may board any vessel, whether commercial or non-commercial, capable of being used in taking marine life, or enter any place of business where marine life is sold, stored, processed, cooked, canned, or cured, for purposes of investigation and inspection, and inspect any and all books and records containing account of the marine life taken, bought, or sold.

Any person who fails to permit an inspection as provided in this section, or who refuses to produce any book or record containing any information of the marine life taken, bought, or sold, and any person who interferes with any officer or agent of the department in the performance of the officer's or agent's duty as authorized in this section, shall be guilty of a petty misdemeanor and[, upon conviction thereof, shall be fined not less than $25 nor more than $500, or imprisoned not less than five nor more than thirty days, or both.] punished as provided by section 189-4."

SECTION 9. Section 190-5, Hawaii Revised Statutes, is amended to read as follows:

"**§190-5 Penalty.** (a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and [fined not more than $500 or imprisoned not more than thirty days, or both.] and punished as provided in subsections (b) and (c).

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

(1) $250 for a first offense:

(2) $500 for a second offense; and

(3) $1,000 for a third or subsequent offense.

(c) The fines specified in this section shall not be suspended or waived."

SECTION 10. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1)[1] to read as follows:

"**§706-606.5 Sentencing of repeat offenders.** (1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second

degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 708-875 relating to trademark counterfeiting; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

(a) One prior felony conviction:
  (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
  (ii) Where the instant conviction is for a class A felony—six years, eight months;
  (iii) Where the instant conviction is for a class B felony—three years, four months;
  (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;

(b) Two prior felony convictions:
  (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
  (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
  (iii) Where the instant conviction is for a class B felony—six years, eight months;
  (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;

(c) Three or more prior felony convictions:
  (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
  (ii) Where the instant conviction is for a class A felony—twenty years;
  (iii) Where the instant conviction is for a class B felony—ten years;
  (iv) Where the instant conviction is for a class C felony offense enumerated above—five years."

SECTION 11. Section 189-13, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 189-16, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 15. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 196 H.B. NO. 1186

A Bill for an Act Relating to Wildlife Penalties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 183D-5, Hawaii Revised Statutes, is amended to read as follows:

"**§183D-5 Penalties.** (a) Any person violating section 183D-21, 183D-25, 183D-33, or 183D-63 or any rule adopted under this chapter shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as follows:

(1) For a first conviction, by a mandatory fine of not less than [$50 nor more than $1,000,] $100, or imprisonment of not more than thirty days, or both;

(2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than [$250 nor more than $1,000,] $500, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State; and

(3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than $1,000, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State.

(b) Any person violating section 183D-25.5, 183D-26, 183D-27, 183D-32, 183D-62, or 183D-64 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

(1) For a first conviction by a mandatory fine of not less than [$100 nor more than $2,000,] $200, or by imprisonment of not more than one year, or both;

(2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than [$500 nor more than $2,000,] $1,000, or by imprisonment of not more than one year, or both, and all firearms

used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State; and

(3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than $2,000, or by imprisonment of not more than one year, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State.

(c) Any person who violates section 183D-35, 183D-36, 183D-37, 183D-38, 183D-39, 183D-40, or 183D-42 shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be fined not less than $100 [nor more than $1,000] or imprisoned not more than thirty days, or both.

(d) In addition to any other penalty imposed under this section, a mandatory fine of $100 shall be levied for each bird illegally taken under this chapter and a mandatory fine of $500 shall be levied for each mammal illegally taken under this chapter.

(e) Any person who is convicted of violating any of the game laws of the State shall immediately have their hunting license forfeited and any person convicted for a second offense shall not be granted a license to hunt for a period of three years after the date of the second conviction.

(f) The court, in lieu of the actual cash payment of any mandatory fine, may allow the defendant to perform such community service as directed by the department of land and natural resources at the rate of one hour of service for every $10 of mandatory fine imposed.

(g) Any criminal action against a person for any violation of this [section] chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 197 H.B. NO. 1188

A Bill for an Act Relating to the State Water Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 174C-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) There is a need for a program of comprehensive water resources planning to address the problems of supply and conservation of water. The [state] Hawaii water [use and protection] plan, with such future amendments, supplements,

and additions as may be necessary, is accepted as the guide for developing and implementing this policy."

SECTION 2. Section 174C-31, Hawaii Revised Statutes, is amended to read as follows:

"**§174C-31 Hawaii water plan.** (a) The Hawaii water plan shall consist of four parts: (1) a water resource protection plan which shall be prepared by the [water resources] commission; (2) water use and development plans for each county which shall be prepared by each separate county and adopted by ordinance, setting forth the allocation of water to land use in that county; (3) a state water [project] projects plan which shall be prepared by the agency which has jurisdiction over such projects in conjunction with other state agencies; and (4) a water quality plan which shall be prepared by the department of health.

(b) All water use and development plans shall be prepared in a manner consistent with the following conditions:

(1) Each water use and development plan shall be consistent with the water resource protection and water quality [plan.] plans;
(2) Each water use and development plan and the state water projects plan shall be consistent with the respective county land use plans and policies including general plan and zoning as determined by each respective county[.];
(3) The water use and development plan for each county shall also be consistent with the state land use classification and policies[.];
(4) The cost to develop the initial water use and development plan for each county shall be funded by the State in an amount not exceeding $150,000 per county[.];
(5) The cost of maintaining the water use and development plan shall be borne by the counties; state water capital improvement funds appropriated to the counties shall be deemed to satisfy Article VIII, section 5 of the State Constitution[.]; and
(6) Each county in order to be eligible for state appropriations for county water projects must have developed an acceptable water use and development plan within the time frame established by this chapter.

(c) To prepare the water [resources] resource protection and water quality [plan,] plans, the commission shall:

(1) Study and inventory the existing water resources of the State and the means and methods of conserving and augmenting such water resources;
(2) Review existing and contemplated needs and uses of water including state and county land use plans and policies and study their effect on the environment, procreation of fish and wildlife, and water quality;
(3) Study the quantity and quality of water needed for existing and contemplated uses, including irrigation, power development, geothermal power, and municipal uses;
(4) Identify rivers or streams, or a portion of a river or stream, which appropriately may be placed within a wild and scenic rivers system, to be preserved and protected as part of the public trust. For the purposes of this paragraph, the term "wild and scenic rivers" means rivers or streams, or a portion of a river or stream of high natural quality or that possess significant scenic value, including but not limited to, rivers or streams which are within the natural area reserves system. The commission shall report its findings to the legislature twenty days prior to the convening of each regular legislative session; and

(5) Study such other related matters as drainage, reclamation, flood hazards, floodplain zoning, dam safety, and selection of reservoir sites, as they relate to the protection, conservation, quantity, and quality of water.

(d) The water resource protection plan shall include, but not be limited to:

(1) Nature and occurrence of water resources in the State;

(2) Hydrologic units and their characteristics, including the quantity and quality of available resource, requirements for beneficial instream uses and environmental protection, desirable uses worthy of preservation by permit, and undesirable uses for which permits may be denied;

(3) Existing and contemplated uses of water, as identified in the water use and development plans of the State and the counties, their impact on the resource, and their consistency with objectives and policies established in the water resource protection and[1] water quality [plan;] plans;

(4) Programs to conserve, augment, and protect the water resource; and

(5) Other elements necessary or desirable for inclusion in the plan.

Thereafter, the commission in coordination with the counties and the department of health shall formulate an integrated coordinated program for the protection, conservation, and management of the waters in each county based on the above studies. This program, with such amendments, supplements, and additions as may be necessary, shall be known as the water resource protection and water quality [plan.] plans.

Thereafter, each county shall prepare a water use and development plan and the appropriate state agency shall prepare the state water projects plan.

(e) The department of agriculture shall prepare a state agricultural water use and development plan for agricultural uses in the State in accordance with chapter 167 and this chapter, and subsequently modify and update the plan as necessary. The state agricultural water use and development plan shall include but not be limited to a master irrigation inventory plan which shall:

(1) Inventory the irrigation water systems;

(2) Identify the extent of rehabilitation needed for each system;

(3) Subsidize the cost of repair and maintenance of the systems;

(4) Establish criteria to prioritize the rehabilitation of the systems;

(5) Develop a five-year program to repair the systems; and

(6) Set up a long-range plan to manage the systems.

The commission shall coordinate the incorporation of the state agricultural water use and development plan into the state water projects plan.

(f) Each county water use and development plan shall include but not be limited to:

(1) Status of water and related land development including an inventory of existing water uses for domestic, municipal, and industrial users, agriculture, aquaculture, hydropower development, drainage, reuse, reclamation, recharge, and resulting problems and constraints;

(2) Future land uses and related water needs; and

(3) Regional plans for water developments including recommended and alternative plans, costs, adequacy of plans, and relationship to the water resource protection and water quality [plan.] plans.

[(d)] (g) The Hawaii water plan shall be directed toward the achievement of the following objectives:

(1) The attainment of maximum reasonable-beneficial use of water for such purposes as those referred to in subsection (a);

(2) The proper conservation and development of the waters of the State;

(3) The control of the waters of the State for such public purposes as navigation, drainage, sanitation, and flood control;

(4) The attainment of adequate water quality as expressed in the [state] water resource protection and water quality [plan;] plans; and

(5) The implementation of the water resources policies expressed in section 174C-2.

[(e)] (h) The Hawaii water plan shall divide each county into sections which shall each conform as nearly as practicable to a hydrologic unit. The [board] commission shall describe and inventory:

(1) All water resources and systems in each hydrologic unit;

(2) All presently exercised uses;

(3) The quantity of water not presently used within that hydrologic unit; and

(4) Potential threats to water resources, both current and future.

[(f)] (i) Within each hydrologic unit the commission shall establish the following:

(1) An instream use and protection program for the surface watercourses in the area[.]; and

(2) Sustainable yield. The sustainable yield shall be determined by the commission using the best information available and shall be reviewed periodically. Where appropriate the sustainable yield may be determined to reflect seasonal variation.

[(g)] (j) The commission shall condition permits under part IV of this chapter in such a manner as to protect instream flows and maintain sustainable yields of ground water established under this section.

[(h)] (k) The commission shall give careful consideration to the requirements of public recreation, the protection of the environment, and the procreation of fish and wildlife. The commission may prohibit or restrict other future uses on certain designated streams which may be inconsistent with these objectives.

[(i)] (l) The commission may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the commission may deny a permit under the provisions of part IV.

[(j)] (m) The commission may also designate certain uses in connection with a particular source of supply which, because of the nature of the activity or amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in any action pursuant to sections 174C-50(h) and 174C-54.

[(k)] (n) The commission may add to the Hawaii water plan any other information, directions, or objectives it feels necessary or desirable for the guidance of the counties in the administration and enforcement of this chapter.

[(l)] (o) In formulating or revising the plans, each county and the commission shall consult with and carefully evaluate the recommendations of concerned federal, state, and county agencies.

[(m)] (p) The commission shall not adopt, approve, or modify any portion of the Hawaii water plan which affects a county or any portion thereof without first holding a public hearing on the matter on the island on which the water resources are located. At least ninety days in advance of such hearing, the commission shall notify the affected county and shall give notice of such hearing by publication within the affected region and statewide.

[(n)] (q) In formulating or revising each county's water use and development plan, the state water [project] projects plan, the water resource protection plan and the water quality plan, each county and the commission shall incorporate the current and foreseeable development and use needs of the department of Hawaiian home lands for water as provided in section 221 of the Hawaiian Homes Commission Act.

Each county shall update and modify its water use and development plans as necessary to maintain consistency with its zoning and land use policies."

SECTION 3. Section 174C-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Respective portions of the water resource protection and water quality [plan,] plans, and the water use and development plans of each county, shall be developed together to achieve maximum coordination."

SECTION 4. Section 174C-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The designation of a water management area by the commission may be initiated upon recommendation by the chairperson or by written petition. It shall be the duty of the chairperson to make recommendations when it is desirable or necessary to designate an area and there is factual data for a decision by the commission. The chairperson, after consultation with the appropriate county council,[2] county mayor, and county water board, shall act upon the petition by making a recommendation for or against the proposed designation to the commission within sixty days after receipt of the petition or such additional time as may be reasonably necessary to determine that there is factual data to warrant the proposed designation."

SECTION 5. Section 174C-43, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§174C-43[]] Investigations required.** Before any proposed water management area is designated by the commission, the chairperson may conduct, cooperate with the appropriate federal or county water agency in conducting, or administer contracts for the conduct of, any scientific investigation or study deemed necessary for the commission to make a decision to designate a water management area. In connection with such investigation or study, the chairperson from time to time may require reports from water users as to the amount of water being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be made on forms furnished by the [department.] commission."

SECTION 6. Section 174C-44, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§174C-44[]] Ground water criteria for designation.** In designating an area for water use regulation, the commission shall consider the following:

(1) Whether an increase in water use or authorized planned use may cause the maximum rate of withdrawal from the ground water source to reach ninety per cent of the sustainable yield of the proposed ground water management area;
(2) There is an actual or threatened water quality degradation as determined by the department of health;
(3) Whether regulation is necessary to preserve the diminishing ground water supply for future needs, as evidenced by excessively declining ground water levels;
(4) Whether the rates, times, spatial patterns, or depths of existing withdrawals of ground water are endangering the stability or optimum

development of the ground water body due to [upcoming] upconing or encroachment of salt water;

(5) Whether the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses;

(6) Whether excessive preventable waste of ground water is occurring;

(7) Serious disputes respecting the use of ground water resources are occurring; or

(8) Whether water development projects that have received any federal, state, or county approval may result, in the opinion of the commission, in one of the above conditions.

Notwithstanding an imminent designation of a ground water management area conditioned on a rise in the rate of ground water withdrawal to a level of ninety per cent of the area's sustainable yield, the commission, when such level reaches the eighty per cent level of the sustainable yield, may invite the participation of water users in the affected area to an informational hearing for the purposes of assessing the ground water situation and devising mitigative measures."

SECTION 7. Section 174C-46, Hawaii Revised Statutes, is amended to read as follows:

"**§174C-46 Findings of fact; decision of commission.** After public hearing and any investigations deemed necessary have been completed, the chairperson, after consultation with the appropriate county council, county mayor, and county water board, shall make a recommendation to the commission for decision. The commission shall render its decision within ninety days after the chairperson's recommendation to the commission. If the commission decides to designate a water management area, it shall cause a public notice of its decision to be given in the appropriate county and when so given,[2] its decision shall be final unless judicially appealed."

SECTION 8. Section 174C-50, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) An application shall be acted upon by the commission within ninety calendar days of an application not requiring a hearing, or within one hundred eighty calendar days of an application requiring a hearing. The time periods prescribed in this subsection shall not be deemed to run for any period in which an application is not complete in all material respects in the judgment of the [board.] commission."

SECTION 9. Section 174C-59, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§174C-59[]] Transfer of permit.** A permit may be transferred, in whole or in part, from the permittee to another, if:

(1) The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and

(2) The commission is informed of the transfer within ninety days.

Failure to inform the [department] commission of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer which involves a change in any condition of the permit, including a change in use covered in section 174C-57, is also invalid and constitutes a ground for revocation."

SECTION 10. Section 174C-67, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commission shall submit to the department of health such information as the department of health shall require, for the performance of its water quality functions."

SECTION 11. Section 174C-68, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§174C-68[]] Water quality plan.** (a) The department of health shall formulate a state water quality plan for all existing and potential sources of drinking water and that plan shall become part of the Hawaii water plan described in part III. Requirements for the plan shall be governed by chapters 340E and 342. The state water quality plan shall include water quality criteria for the designation of ground water management areas and surface water [sources] management areas pursuant to section 174C-44[.] and 174C-45.[3]

(b) The state water quality plan shall be periodically reviewed and revised by the department of health as needed.

(c) In formulating or revising the state water quality plan, the department of health shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies, particularly county water supply agencies.

(d) The department of health may ban the importation into this State of any substances which the department of health reasonably believes may present a danger to the water quality of this State."

SECTION 12. Section 174C-87, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§174C-87[]] Abandonment of wells.** When a well is abandoned, the owner shall fill and seal the well in a manner approved by the commission. Before abandonment, the owner shall file with the commission a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment; and such other information as the [board] commission may require."

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. "And" should be underscored.
2. Comma should be underscored.
3. "And 174C-45" should be underscored.

ACT 198 H.B. NO. 1197

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended to read as follows:

"§235-2.3 Conformance to the federal Internal Revenue Code; general application. (a) For all taxable years beginning after December 31, [1997,] 1998, as used in this chapter "Internal Revenue Code" means subtitle A, chapter 1 of the federal Internal Revenue Code of 1986, as amended as of December 31, [1997,] 1998, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal public laws which pursuant to this chapter do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

(1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and

(2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.

(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

(1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 1(h)(3) (relating to net capital gain reduced by the amount taken into account as investment income), except section 42 (with respect to low-income housing credit), and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.7 and 235-110.8;

(2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);

(3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);

(4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);

(5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);

(6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);

(7) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);

(8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);

(9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;

(10) Section 196 (with respect to deduction for certain unused investment credits);

(11) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
(12) Section 280C (with respect to certain expenses for which credits are allowable);
(13) Section 291 (with respect to special rules relating to corporate preference items);
(14) Section 367 (with respect to foreign corporations);
(15) Section 501(c)(12), (15), (16) (with respect to exempt organizations);
(16) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
(17) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
(18) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
(19) Section 642(a) and (b)(with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
(20) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
(21) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
(22) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
(23) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, [and] 235-7(b), and 235-55;
(24) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
(25) Section 1055 (with respect to redeemable ground rents);
(26) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
(27) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
(28) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations); and
(29) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E."

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

"**§235-2.4 Operation of certain Internal Revenue Code provisions.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

(1) $1,900 in the case of:
  (A) A joint return as provided by section 235-93[,]; or
  (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code)[,];
(2) $1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code)[,];

(3) $1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household[,]; or

(4) $950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of $500 or such individual's earned income. Section 63(f) shall not be operative in this State.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to the exclusion of gain from the sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 213 (with respect to medical, dental, etc., expenses) of the Internal Revenue Code shall be operative, except that subsections (d)(1)(C) with respect to long-term care services, (d)(1)(D) as it applies to long-term care insurance contract premiums, (d)(7) as it applies to long-term care insurance contract premiums, and (d)(10) as it applies to eligible long-term care premiums shall not be operative in this State.

(e) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(f) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the secretary of the Treasury of the United States.

(g) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

[(g)] (h) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for

the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

[(h)] (i) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

[(i)] (j) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

[(j)] (k) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction which is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

[(k)] (l) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

[(l)] (m) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

(n) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 for this chapter means federal modified adjusted gross income as defined in section 530.

[(m)] (o) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

(1) The deduction for exemptions shall be allowed as provided in section 235-54(b).

(2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State.

(3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

[(n) Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the determination of the interest rate established under section 6621 of the Internal Revenue Code referred to in section 644(a)(2) of the Internal Revenue Code shall instead be the interest rate established under section 231-39(b)(4).

(o)] (p) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

[(p)] (q) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

[(q)] (r) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a) shall be limited to five years.

[(r)] (s) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

(t) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

[(s)] (u) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

[(t)] (v) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

(w) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

[(u)] (x) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset which is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis."

SECTION 3. Section 235-93.5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1998.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 199

S.B. NO. 550

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that under current law, the auditor is required to report department of education expenditures to the legislature, pursuant to section 302A-1004(b), Hawaii Revised Statutes. In Report No. 98-5, "Fiscal Accountability Audit of the Department of Education: The Public and the Schools Need to Know the True Costs of Education," the auditor stated that the statutorily defined role of the auditor does not include reporting other department's expenditures. By requiring the auditor to perform this task, the statute absolves the department of education of the responsibility for reporting its own expenditure information to the legislature. Indeed, the department has declined to report school-by-school expenditures, as required by Act 218, Session Laws of Hawaii 1995, for this reason.

The legislature further finds that accurate and organized educational expenditure reporting is crucial for accountability and school-based decisionmaking. Despite its importance, the auditor has noted that in response to requests for better reporting, the department of education has stated that acquiring such information can sometimes be too costly.

The legislature believes that given the sophistication of today's technology, timely and accurate reporting is not outside the purview of either the department's abilities or its budget. As noted by the auditor in Report No. 98-5, computer software such as In$ite can provide extensive information about a school system in a wide array of readable reports, without great cost. It can do so with relatively minimal requirements, and can produce results that far exceed the current department reports in accuracy or clarity.

The purpose of this Act is to return the responsibility of expenditure reporting for the department of education from the auditor to the department, and to require reports containing specific major functions and sub-functions, which are at least equal to, if not better than, those provided through In$ite software.

SECTION 2. Section 302A-1004, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall provide electronic access to computer-based financial management, student information, and other information systems to the legislature and the auditor. The [auditor] department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each legislative session, a [fiscal accountability] school-by-school expenditure report that includes but is not limited to the following:

(1) The financial analysis of expenditures by the department with respect to the following areas:
    [(A) Administration;
    (B) Facilities and operations;

(C) Teacher support and development;
(D) Pupil support;
(E) Instructional support; and
(F) Classroom instruction; and]
(A) Instruction, including face-to-face teaching, and classroom materials;
(B) Instructional support, including pupil, teacher, and program support;
(C) Operations, including non-instructional pupil services, facilities, and business services;
(D) Other commitments, including contingencies, capital improvement projects, out-of-district obligations, and legal obligations; and
(E) Leadership, including school management, program and operations management, and district management;

and

(2) The measures of accuracy, efficiency, and productivity of the department, districts, and schools in delivering resources to the classroom and the student."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 200 S.B. NO. 590

A Bill for an Act Relating to Restraining and Protective Orders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 586-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) When a temporary restraining order is granted pursuant to this chapter and the respondent or person to be restrained knows of the order, a knowing or intentional violation of the restraining order is a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

(1) For a first conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than $150 nor more than $500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
(2) For the second and any subsequent conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than $250 nor more than $1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor."

SECTION 2. Section 586-11, Hawaii Revised Statutes, is amended to read as follows:

"**§586-11 Violation of an order for protection.** (a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor. [The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:] A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

(1) For a first conviction for violation of the order for protection:
   (A) That is in the nature of non-domestic abuse, [a violator] the person may be sentenced to a jail sentence of forty-eight hours and be fined not more than $150; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
   (B) That is in the nature of domestic abuse, [a violator] the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not less than $150 nor more than $500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
(2) For a second conviction for violation of the order for protection:
   (A) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of non-domestic abuse, [a violator] the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than $250; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
   (B) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, [a violator] the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than $250 nor more than $1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
   (C) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, [a violator] the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours[, unless the court, in writing, finds that the

violation does not warrant a jail sentence and provides the reasons for its decision] and be fined not more than $250; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

(D) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that is in the nature of non-domestic abuse, [a violator] the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than $150; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

(3) For any subsequent violation that occurs after a second conviction for violation of the same order for protection, [the court shall impose] the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days [imprisonment] and be fined not less than $250 nor more than $1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence under subparagraphs (1)(A) and (2)(C), upon [appropriate conditions] condition [such as] that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or [counseling] intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this chapter.

(b) Any fines collected pursuant to subsection (a) shall be deposited into the spouse and child abuse special account established under section 601-3.6."

SECTION 3. Section 580-10, Hawaii Revised Statutes, is amended to read as follows:

"**§580-10 Restraining orders; appointment of master.** (a) When a complaint for annulment, divorce, or separation, is filed in this State, the court, on an application by either party, supported by affidavit or a statement made under penalty of perjury, without a hearing, may enjoin and restrain each of the parties to that action from transferring, encumbering, wasting, or otherwise disposing of any of their property, whether real, personal, or mixed, over and above current income, except as necessary for the ordinary course of a business or for usual current living expenses, without the consent and concurrence of the other party to such action for divorce, or further specific order of the court. Where such restraining orders are issued against the other party to the action, such person shall be served promptly with the order and shall be entitled to a prompt hearing to show cause why such order should not be enforced.

(b) In all actions for annulment, divorce, or separation, the court shall have the power to issue such restraining orders against a person or persons not a party to the action, as shall be reasonably required during the pendency of such action, to preserve the estates of the parties. Where such restraining orders are issued against a person or persons not a party to the action, such persons shall be promptly served with the order and shall be entitled to a prompt hearing within a reasonable time to show cause why such order should not be enforced.

(c) In all actions for annulment, divorce, or separation, the court shall have the power to appoint a master, or masters, to make preliminary findings and to report to the court on any issue. The written reports of a master shall be available to interested parties and may be received in evidence if no objection is made; or if objection is made, may be received in evidence provided the person or persons responsible for the reports are available for cross-examination as to any matter contained therein. When a report is received in evidence, any party may introduce other evidence supplementing, supporting, modifying, or rebutting the whole or any part of the report.

(d) Whenever it is made to appear to the court after the filing of any complaint, that there are reasonable grounds to believe that a party thereto may inflict physical abuse upon, threaten by words or conduct, or harass the other party, the court may issue a restraining order to prevent such physical abuse, threats, or harassment, and shall enjoy in respect thereof the powers pertaining to a court of equity. Where necessary, the order may require either or both of the parties involved to leave the marital residence during the period of the order, and may also restrain the party to whom it is directed from contacting, threatening, or physically abusing the children or other relative of the spouse who may be residing with that spouse at the time of the granting of the restraining order. The order may also restrain a party's agents, servants, employees, attorneys, or other persons in active concert or participation with the respective party.

(1) A knowing or intentional violation of a restraining order issued pursuant to this section is a misdemeanor. [The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:] A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

(A) For a first conviction for violation of the restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours[;] and be fined not less than $150 nor more than $500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and

(B) For the second and any subsequent conviction for violation of the restraining order, the person shall serve a mandatory minimum jail sentence of thirty days[.] and be fined not less than $250 nor more than $1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under subparagraphs (A) and (B), upon [appropriate conditions such as] condition that the defendant remain alcohol and drug-free, conviction-free or complete court-ordered assessments or [counseling] intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments[, equitable as well as legal, including civil contempt,] shall apply to this section.

(2) Any law enforcement officer shall enforce a restraining order issued pursuant to this subsection, including lawfully ordering the restrained party to voluntarily leave for a three-hour cooling off period, or, with or without a warrant, where the law enforcement officer has reasonable grounds to believe that the restrained party has violated the restraining order, arresting the restrained party.

(e) Any fines collected pursuant to subsection (d) shall be deposited into the spouse and child abuse special account established under section 601-3.6."

SECTION 4. Section 601-3.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The account shall consist of fees remitted pursuant to sections 338-14.5 and 572-5, fines collected pursuant to [section] sections 586-4(c), 580-10, and 586-11, interest and investment earnings, grants, donations, and contributions from private or public sources. All realizations of the account shall be subject to the conditions specified in subsection (b)."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 201 S.B. NO. 591

A Bill for an Act Relating to Custody and Visitation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

"§571-46 Criteria and procedure in awarding custody and visitation. In the actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

(1) Custody should be awarded to either parent or to both parents according to the best interests of the child;

(2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;

(3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;

(4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any

minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated;

(5) The court may hear the testimony of any person or expert produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;

(6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;

(7) Reasonable visitation rights shall be awarded to parents, grandparents, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;

(8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;

(9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:

(A) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person; and

(C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation [is] shall not be a factor that weighs against the parent in determining custody or visitation;

(10) A court may award visitation to a parent who committed family violence only if the court finds that adequate provision for the physical safety and psychological well-being of the child and adequate provision for the safety of the parent who is a victim of family violence can be made;

(11) In a visitation order, a court may:

(A) Order an exchange of a child to occur in a protected setting;

(B) Order visitation supervised by another person or agency;

(C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
(D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
(E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
(F) Prohibit overnight visitation;
(G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
(H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
(I) Order the address of the child and the victim to be kept confidential;

(12) The court may refer but shall not order an adult who is a victim of family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of family violence, as a condition of receiving custody of a child or as a condition of visitation;
(13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and
(14) A supervised visitation center must provide a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation, and provide supervision by a person trained in security and the avoidance of family violence."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 202 S.B. NO. 592

A Bill for an Act Relating to Firearms.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 134-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Sections 134-6 to 134-9, except section 134-7(f), shall not apply:
(1) To [members of police departments, sheriffs, and law enforcement officers;] state and county law enforcement officers; provided that such persons are not convicted of an offense involving abuse of a family and household member under section 709-906;

(2) To members of the armed forces of the State and of the United States and mail carriers while in the performance of their respective duties if those duties require them to be armed;
(3) To regularly enrolled members of any organization duly authorized to purchase or receive the weapons from the United States or from the State, provided the members are either at, or going to or from, their places of assembly or target practice;
(4) To persons employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed;
(5) To aliens employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed;
(6) To police officers on official assignment in Hawaii from any state which by compact permits police officers from Hawaii while on official assignment in that state to carry firearms without registration. The governor of the State or the governor's duly authorized representative may enter into compacts with other states to carry out this [section] paragraph."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 203 S.B. NO. 616

A Bill for an Act Relating to Prostitution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that those who promote prostitution leave life-long physical, emotional, and financial scars on their victims, often in the form of personal injury, disease, mental or emotional harm, and medical and rehabilitation expenses, as well as the loss of past or future income or earning capacity. In some cases, even death may result.

Although the criminal justice system is an important weapon against prostitution and the promotion of prostitution, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those victims who have suffered harm as a result of the promotion of prostitution. Those who promote prostitution should bear the cost of the harm, including noneconomic damages, caused by that activity in the community.

The legislature finds that this is especially true for those who coerce an individual into prostitution. Under current law, if a person knowingly compels a person by criminal coercion to engage in prostitution, or profits from another's coercive conduct, that person commits the felony offense of promoting prostitution in the first degree.

The legislature further finds that the added threat of civil liability to those who coerce individuals into prostitution, or profit by that coercion serve as an

additional deterrent to the promotion of prostitution. A person who has substantial assets is likely to decide that the added cost of engaging in that activity is not worth the benefit. This Act therefore provides a mechanism whereby the cost of the injuries caused by coercing a person into prostitution will be borne by those who promote prostitution. The legislature finds that this Act is necessary to protect the health, safety, and welfare of the people of this State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
LIABILITY FOR COERCION INTO PROSTITUTION

§ **-1 Title.** This Act may be cited as the Prostitution Coercion Liability Act.

§ **-2 Definitions.** As used in this chapter:

"Coerce" means to use or threaten to use any form of domination, restraint, or control for the purpose of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution. Coercion exists if the totality of the circumstances establish the existence of domination, restraint, or control that would have the reasonably foreseeable effect of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution.

"Prostitution" has the same meaning as provided in section 712-1200.

"Promoting prostitution" means promoting prostitution in the first or second degree, as provided in sections 712-1202 and 712-1203, respectively.

§ **-3 Cause of action for coercion into prostitution.** An individual has a cause of action against a person who:

(1) Coerced the individual into prostitution;
(2) Coerced the individual to remain in prostitution;
(3) Used coercion to collect or receive any of the individual's earnings derived from prostitution; or
(4) Hired, or attempted to hire the individual to engage in prostitution, when a reasonable person would believe that the individual was coerced into prostitution by another person.

Paragraph (3) shall not apply to minor children who are dependent on the individual and who may have benefited from or been supported by the individual's earnings derived from prostitution.

§ **-4 Evidence.** Acts that may serve as evidence in support of a claim under section -3 include but are not limited to:

(1) Physical force or threats of physical force;
(2) Physical or mental torture;
(3) Leading an individual to believe that the individual will be protected from violence or arrest;
(4) Kidnapping;
(5) Blackmail;
(6) Extortion;
(7) Threat of criminal prosecution for any violation of the law;
(8) Threat of interference with parental rights;
(9) Restriction or interference with speech or communication with others;
(10) Isolation;

(11) Exploitation of pornographic performance;
(12) Interference with opportunities for education;
(13) Destroying property of the individual;
(14) Restriction of movement; or
(15) In the case of a person coerced while a minor:
(a) Exploiting needs for food, shelter, safety, affection, or intimate relationship;
(b) Exploiting a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency;
(c) Promise of legal benefit, such as posting bail, procuring an attorney, protecting from arrest, or promising unionization;
(d) Promise of financial rewards; or
(e) Defining the terms of an individual's employment or working conditions in a manner that is likely to lead to the individual's use in prostitution.

§ -5 **Damages.** A person entitled to bring an action under section -3 may recover all of the following damages:
(1) Economic damages proximately caused by coercion into prostitution;
(2) Noneconomic damages proximately caused by coercion into prostitution;
(3) Exemplary damages;
(4) Reasonable attorney's fees; and
(5) Costs of suit, including reasonable expenses for expert testimony.

§ -6 **Joinder of parties.** (1) In the discretion of the court, two or more persons may join in one action under this chapter as plaintiffs if their respective actions involve an individual who engages in promoting prostitution by coercion.
(2) In the discretion of the court, two or more persons may be joined in one action under this chapter as defendants if those persons may be liable to at least one plaintiff.

§ -7 **Statute of limitations.** (1) A claim under this chapter may not be brought against a person more than two years after an act of promoting prostitution by coercion by that person.
(2) The limitation period provided for in this chapter is tolled:
(a) During the minority of the individual who engages in prostitution; or
(b) Any time there is a criminal offense investigation being actively conducted against the defendant by a governmental agency or there is a criminal offense charge, information, or indictment pending against the defendant.

§ -8 **Stay of action.** On motion by a governmental agency involved in an investigation or prosecution for promoting prostitution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

§ -9 **Other remedies preserved.** The remedies provided under this chapter do not restrict the right of any person to bring an action under other law, including common law, to recover damages arising out of the use of the individual in prostitution or the coercion incident to the individual being used in prostitution; nor does this chapter limit or restrict the liability of any person under other law."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to any other person or circumstance shall not be affected by that invalidation.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 204 S.B. NO. 630

A Bill for an Act Relating to Campaign Contributions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to Part XII, subpart B to be appropriately designated and to read as follows:

"**§11- Late contributions; reports.** (a) Each candidate, candidate's committee, or committee, that within the period of fifteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than $500, or receives contributions from any person or entity aggregating more than $500, shall file a report with the commission or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m., three calendar days prior to the election.

(b) The report shall include the name, address, occupation and employer of the contributor, the name of the candidate, candidate's committee, or committee receiving the contribution, the amount of the contribution, the contributor's aggregate contributions to the candidate, candidate's committee, or committee, and the purpose, if any, to which the contribution will be applied.

(c) A report filed pursuant to this section shall be in addition to any other campaign report required to be filed by this subpart."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 205

S.B. NO. 631

A Bill for an Act Relating to Political Parties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any party which does not meet the following requirements or the requirements set forth in sections 11-62 to 11-64, shall be subject to disqualification:

(1) A party must have had candidates running for election at the last general election for any of the offices listed in paragraph (2) whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of the incumbent's term; and

(2) The party received at least ten per cent of all votes cast:
   (A) For any of the offices voted upon by all the voters in the State; or
   (B) In at least fifty per cent of the congressional districts;[1]
   [(C) In at least the six senatorial districts with the lowest votes cast for the office of state senator; or
   (D) In at least fifty per cent of the representative districts for the office of state representative.]; or

(3) The party received at least four per cent of all the votes cast for all the offices of state senator statewide; or

(4) The party received at least four per cent of all the votes cast for all the offices of state representative statewide; or

(5) The party received at least two per cent of all the votes cast for all the offices of state senate and all the offices of state representative combined statewide."

SECTION 2. Section 11-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any group of persons hereafter desiring to qualify as a political party for election ballot purposes in the State shall file with the chief election officer a petition as provided in [[]this[]] section. The petition for qualification as a political party shall:

(1) Be filed not later than 4:30 p.m. on the one hundred seventieth day prior to the next primary;

(2) Declare as concisely as may be the intention of signers thereof to qualify as a statewide political party in the State and state the name of the new party;

(3) Contain the name, signature, residence address, date of birth, and other information as determined by the chief election officer of currently registered voters comprising not less than one-tenth of one per cent of the total registered voters of the State as of the last preceding general election;

(4) Be accompanied by the names and addresses of the officers of the central committee and of the respective county committees of the political party and by the party rules; and

(5) Be upon the form prescribed and provided by the chief election officer."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Semicolon should be bracketed.

ACT 206

S.B. NO. 635

A Bill for an Act Relating to Substance Abuse Testing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 329B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§329B- Substance abuse on-site screening tests, testing procedures, and confidentiality.** The substance abuse on-site screening test shall be administered for pre-employment purposes only according to the instructions of the manufacturer and this section:

(1) Every employer using a substance abuse on-site screening test for pre-employment screening shall administer the test according to the United States Food and Drug Administration package insert that accompanies the substance abuse test, and shall adhere to any applicable on-site screening drug test guidelines adopted by the United States Food and Drug Administration. Any on-site screening test shall also be approved by the director for such pre-employment screening;

(2) Every employer using a substance abuse on-site screening test for pre-employment screening shall adhere to the rules adopted pursuant to section 329B-8 pertaining to specimen collection, urine specimen, shipping of specimens, chain of custody, and confidentiality that may be applicable to on-site drug testing;

(3) If a substance abuse on-site screening test obtains a test result that indicates the presence of drugs, alcohol, or the metabolites of drugs; and if the test result may be used to deny or deprive a person of employment or any benefit, or may otherwise result in an adverse action being taken against the person, then the same sample that produced the test result shall be submitted for a confirmatory test to a testing laboratory licensed or approved by the department in accordance with this chapter. A positive confirmatory test shall be reviewed by a medical review officer licensed by the department in accordance with this chapter; and

(4) The operator who administers the substance abuse on-site screening test shall have been trained in the use and administering of the on-site screening test by the manufacturer of the on-site screening test or the manufacturer's designee."

SECTION 2. Section 329B-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"'"Substance abuse on-site screening test" means a portable substance abuse test that meets the requirements of the United States Food and Drug Administration for commercial distribution and is approved by the director for such pre-employment screening."

2. By amending the definition of "substance abuse test" to read:

"'"Substance abuse test" means any testing procedure designed to take and analyze body fluids or materials from the body for the purpose of measuring the amount of drugs, alcohol, or the metabolites of drugs in the sample tested. The term includes any substance abuse on-site screening test designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of drugs, alcohol, or the metabolites of drugs in the sample tested."

SECTION 3. Section 329B-3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§329B-3[]] Limitations.** No third party shall require, request, or suggest that any individual submit to a substance abuse test that does not meet all the requirements of this chapter except for third parties who are covered by [any] a drug testing regulation [promulgated] adopted by the [Hawaii] department of transportation or the United States Department of Transportation or any other federal agencies. All costs, including confirmatory testing costs, shall be paid for by the third party. Nothing in this chapter shall be construed to preclude the department or any laboratory certifying agency approved by the director from examining the records of laboratories, including substance abuse on-site screening locations, licensed for substance abuse testing to ascertain compliance with licensure or certification requirements, or to preclude the administration of breath tests to determine the alcohol content of the tested individual's blood for purposes of this chapter."

SECTION 4. Section 329B-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All substance abuse testing performed in the State shall be performed by a testing laboratory licensed by the department for that purpose, or certified for substance abuse testing by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services, and approved by the director[.], except as provided in section 329B- ."

SECTION 5. Section 329B-5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§329B-5[]] Substance abuse testing procedures and interpretation of [laboratory] test results.** (a) Prior to the collection of any sample for substance abuse testing, the individual to be tested shall receive a written statement of the specific substances to be tested for and a statement that over-the-counter medications or prescribed drugs may result in a positive test result. The individual, prior to the collection of any sample for substance abuse testing, shall receive a medication disclosure form, approved by the director, to permit the individual to disclose any over-the-counter medication or prescribed drug that the individual has taken within the previous thirty days.

(b) In accordance with this section, the director shall [create in administrative] adopt rules[, regulations] pertaining to:

(1) [the] The qualifications, responsibilities, and licensing of the medical review officer;

(2) [the] The use of medication disclosure forms;

(3) [the] The method of transmittal of laboratory test results and any interpretations of test results to the third party and the tested individual; and

(4) [the] The obtaining, disclosure, and confidentiality of substance abuse testing information.

(c) No laboratory, including a substance abuse on-site screening location, may test for any substance not included on the written statement containing the specific substances to be tested for.

(d) As used in this section, "test results" means laboratory test results or the results of substance abuse on-site screening tests."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 207 S.B. NO. 663

A Bill for an Act Relating to Motor Vehicle Registrations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 249-7.5, Hawaii Revised Statutes, is amended to read as follows:

"**§249-7.5 New motor vehicle with a temporary number plate.** Any person who has purchased a new motor vehicle which has attached a temporary number plate under section 286-53 shall register the new motor vehicle in accordance with this chapter within [twenty] thirty days after taking possession of the motor vehicle. For the purposes of this chapter, the registration of such a motor vehicle shall be considered an original registration under section 249-7. Within thirty days of the original registration of such a motor vehicle, the director of finance shall furnish two number plates and the valid tag or emblem appropriate for the year of registration, if any, which shall be attached to the motor vehicle as provided under section 249-7. Upon attachment of the number plates, the temporary number plate provided under section 286-53 shall be destroyed."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 208

S.B. NO. 664

A Bill for an Act Relating to Special Number Plates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 249-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding any other provision of the law, any antique motor vehicle shall be issued a special number plate for a fee of $10 which plate shall be permanent and valid for use on such vehicles so long as the vehicle is in existence in lieu of the uniform state number plates. The director of finance may discard and allow for new applications of inactive special number plates that have not been assigned or registered during the preceding three years. In addition to the payment of any other fee required by law, applicable to antique motor vehicles, the owner of any such vehicle shall pay the fee for the issuance of the special number plate. The registration numerals and special number plates assigned to antique motor vehicles shall be labeled "Horseless Carriage" and "Permanent" and shall run in a separate numerical series, commencing with Horseless Carriage No. 1."

SECTION 2. Section 249-9.1, Hawaii Revised Statutes, is amended to read as follows:

"**§249-9.1 Special number plates.** In addition to the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance may provide, upon request, special number plates. The special number plates shall conform to the requirements provided for the uniform number plates except that the owner may request the choice and arrangement of letters and numbers. The maximum number of letters and numbers shall be six and only one hyphen will be allowed in addition to and in lieu of the six letters and numerals. No other punctuation marks shall be allowed. The director of finance shall not issue special number plates which have the letter and numeral combination of regular plates, are misleading or publicly objectionable. The fee for special number plates shall be $25 upon initial application and $25 upon each annual renewal of the vehicle registration. This fee shall not be refundable. Re-application for special number plates must be made upon a change in design of regular plates. The director of finance may discard and allow for new applications of inactive special number plates that have not been assigned or registered during the preceding three years. The director of finance shall [prescribe] adopt rules pursuant to chapter 91 to carry out [the provisions of] this section."

SECTION 3. Section 249-9.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance shall provide for a fee, one set of special number plates upon the receipt of an application together with:

(1) Specific proof that the applicant was awarded the Purple Heart by the United States Department of Defense for wounds received in military or naval combat against an armed enemy of the United States;
(2) Certification that the applicant is a veteran;

(3) Specific proof that the applicant was [providing military service to] serving the United States[,] in the military or as a civilian, on Oahu, or offshore at a distance of not more than three miles at the time of the December 7, 1941, attack on Pearl Harbor. Certification from the Hawaii state chairperson of the Pearl Harbor Survivors Association shall constitute sufficient proof;

(4) Specific proof that the applicant was confined as a prisoner of war while providing military service to the United States; or

(5) Certification from the United States Department of Veterans Affairs or the state office of veterans' services that the applicant is a combat veteran or a veteran of the Vietnam conflict or the Korean conflict or World War II."

SECTION 4. Section 249-9.3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§249-9.3[]] Special number plates; design and issuance by counties.** (a) [Beginning January 1, 1998, in] In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the county directors of finance[, by the affirmative vote of the majority, may authorize the issuance of] shall issue special number plates to any organization [or institution] in the State that meets the minimum standards and qualifications established under [rules adopted in accordance with subsection (b).] this section. Organizations are authorized to retain the fees collected, less expenses, for the special number plates.

[(b)] The director of finance of the city and county of Honolulu, in consultation with the directors of finance of the counties of Kauai, Maui, and Hawaii, shall [adopt rules in accordance with chapter 91 to:

(1) Establish application procedures and eligibility standards for organizations or institutions seeking special number plates under this section;

(2) Establish] establish special design parameters and restrictions for decals or graphic representations affixable to special number plates; [and

(3) Set reasonable charges and fees for the recovery of administrative costs incurred as the result of the issuance of special number plates under this section.] provided that the decal shall not be larger than two and one-half inches wide by three inches high.

(b) For the purposes of this section, the following terms shall have the following meanings:

"Director" unless indicated otherwise by its context, means the county directors of finance.

"Organization" means an organization of at least one hundred members in good standing that is:

(1) A not-for-profit organization recognized as such by the Internal Revenue Service and whose primary purpose is to provide the community with specific programs to improve the public's health, education, or general welfare;

(2) A military service veterans group; or

(3) A state or county agency approved by the director.

An organization includes any school or accredited institution of higher learning or a college or recognized program thereof.

"Special number plate" means a license plate with a decal on its face that represents an organization as defined in this section.

(c) Organizations as defined under subsection (b) may apply for a special number plate with the director. The organization shall design a decal to be placed on the license plate that represents the organization and complies with this section.

All organizations shall be headquartered in the State; provided that an organization that is a chapter or branch of an international, national, or regional organization shall be in good standing and authorized in writing by the parent organization to use the decal design applied for by the organization.

(d) An organization shall apply for a special number plate with the director on an application form prescribed by the director. The application shall include:

(1) A design of the organization's decal;

(2) A signed notarized statement by an officer of the organization that the organization will acquire at least one hundred fifty special number plates; and

(3) The dollar amount the organization plans to raise from each special number plate.

The director shall determine, based on criteria in this section, and the director's discretion, whether an organization's application has been accepted or rejected. The director shall also seek the approval of an organization's decal design from the county chief of police where the application is made.

If the director rejects an application, the director shall state the reasons for the rejection in writing and shall allow the applicant to reapply within a reasonable period after the rejection.

After an organization's application has been approved, members of the organization may apply for the organization's special number plate. The director may require proof of membership of an organization's members in addition to the completion of a form as prescribed by the director. Special number plates shall be issued only to the registered owner of an applicant motor vehicle.

(e) The design of the decal used on an organization's special number plate shall not:

(1) Infringe or otherwise violate any trademark, trade name, service mark, copyright, or other proprietary or property right;

(2) Represent any obscene or degrading image, idea, word, or phrase;

(3) Advertise or endorse a product, brand, or service that is provided for sale;

(4) Promote any religious belief; or

(5) Promote any philosophy based on prejudice or that is contrary to state civil rights laws;

provided that the decal does not obstruct the visibility of the number or letters or any other information that is required by law to be on the license plate and is readily identifiable and distinguishable under actual traffic conditions.

(f) The director shall charge a special number plate fee equal to the county's cost of providing the special number plate plus the organization's fund raising amount applied for under subsection (d). The fee shall be in addition to any other state or county fees collected for a motor vehicle registration or license plate. The fund raising portion of the fee shall be deposited in the name of the organization in a separate county budget account. The director shall determine the most efficient means of reimbursing organizations for their fund raising portion of the fee.

(g) Registration certificates and special number plates issued under this section shall not be transferable to any other person. Prior to the transfer of the ownership of a motor vehicle with special number plates, the registered owner of the motor vehicle shall surrender the special number plates to the director as a condition to the issuance of a new motor vehicle registration and license plates.

(h) Nothing in this section shall be construed to apply to special number plates issued pursuant to section 249-9.2."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 209 S.B. NO. 1018

A Bill for an Act Relating to the Drug Formulary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 328-91, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"""Hawaii additions and deletions list" means:

(1) A list of drug products that the board has determined to be safe, effective, and therapeutically equivalent generic drug products but are not in the Orange Book; and

(2) A list of drug products that are included in the Orange Book, but the board has determined not to be safe, effective, therapeutically equivalent, or bioequivalent generic drug products.

"Orange Book" means the United States Food and Drug Administration's "Approved Drug Products with Therapeutic Equivalence Evaluations" publication and its cumulative supplements, which include a list of approved prescription drug products with therapeutic equivalence evaluations."

SECTION 2. Section 328-96, Hawaii Revised Statutes, is amended to read as follows:

"**§328-96 Drug formulary.** (a) The board [shall] may adopt rules, pursuant to chapter 91, [for the establishment and maintenance of a state drug formulary of equivalent drug products, and] to effectuate the purpose of this part[; except that the board may, without]. Without regard to chapter 91, [establish in the formulary equivalent drug products that] the board may adopt as rules the Orange Book and its cumulative supplements once they are issued by the Commissioner of Food and Drugs, United States Food and Drug Administration, [has approved as safe and effective and has determined to be therapeutically equivalent. The formulary shall list all drug products that the Commissioner of Food and Drugs, United States Food and Drug Administration, has approved as safe and effective and has determined to be therapeutically equivalent.] as the state drug formulary of equivalent drug products. The board may adopt rules, pursuant to chapter 91, to establish a Hawaii additions and deletions list; provided that section 328-92(d) shall apply, and no pharmacist shall substitute an equivalent drug product for any prescription for an anti-epileptic drug to treat epilepsy, except upon the consent of the practitioner and the patient or the patient's parent or guardian. Upon the adoption of the Orange Book or its cumulative supplements, the board shall notify all pharmacies in the State and other interested individuals, within thirty working days, that the formulary has been updated. The [formulary] Hawaii additions and deletions list may list additional substitutable drug products that are determined by the board to [meet requirements adequate to assure product quality and therapeutic equivalence.] be safe, effective, and therapeutically equivalent. The [formulary] Hawaii additions and deletions list may delete [approved drugs] drug products listed in the Orange Book upon [a] the board's finding that product quality or therapeutic equivalency or bioequivalency, as appropriate, is not adequately assured.

(b) [The formulary] Pursuant to chapter 91, the Hawaii additions and deletions list may be changed, added to, or deleted from as the board deems appropriate. Any person who requests that any change be made or that a generic name or brand name drug be included or added to or deleted from the [formulary] Hawaii additions and deletions list shall have the burden of proof to show cause why the change, inclusion, addition, or deletion should be made.

(c) The board shall [provide for revision or supplementation of the formulary] revise or supplement the Hawaii additions and deletions list as necessary [but not less than annually].

(d) The department [of health] shall provide for distribution of the [formulary,] Hawaii additions and deletions list and its revisions[,] and supplements to all pharmacies in the State and to any other interested individuals. The department [of health] may establish fees to be charged to persons who receive the [formulary,] Hawaii additions and deletions list and its revisions[,] and supplements. The amounts of the fees charged for the [formulary,] Hawaii additions and deletions list and its revisions[,] and supplements shall be approximately the same as the costs of producing and distributing the [formulary,] Hawaii additions and deletions list and its revisions[,] and supplements.

(e) Each pharmacy in the State shall:

(1) Obtain, maintain, and update the Orange Book and its cumulative supplements; and

(2) Obtain the Hawaii additions and deletions list.

[(e)] (f) The department shall provide for public education regarding the provisions of this part and shall monitor the effects of this part."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 210 S.B. NO. 1021

A Bill for an Act Relating to Clinical Laboratory Personnel.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of health, with the approval of the governor, may [prescribe such] adopt rules as it deems necessary for the public health or safety respecting:

(1) The occupations or practices of clinical laboratory directors, medical [laboratory] technologists[,] (clinical laboratory scientists), clinical laboratory [supervisors,] specialists, cytotechnologists, medical laboratory technicians[,] (clinical laboratory technicians), tattoo artists, sanitarians, asbestos inspectors, asbestos management planners, asbestos abatement project designers, lead inspectors, lead risk assessors, lead abatement workers, lead abatement supervisors, and lead abatement project designers;

(2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for these occupations or practices may be issued;
(3) The health, habits, character, practices, standards, or conduct of persons holding these certificates or permits; [or] and
(4) The grounds or causes for revoking or suspending these certificates or permits.

The rules shall have the force and effect of law."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 211

S.B. NO. 1024

A Bill for an Act Relating to Environment.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The department of health is moving toward adoption of a risk-based environmental management strategy, which is based upon risk assessment to human health and the environment, rather than upon rigid technical standards.

Under the Comprehensive Emergency Response, Compensation and Liability Act of 1980 (CERCLA) and the Oil Pollution Act of 1990 (OPA 90), the department of health has responsibility as a "natural resources trustee." To fulfill this responsibility, the department must have the ability to evaluate the impact of chemical releases and oil spills on the complex ecosystems of Hawaii. This expertise requires an individual who is trained and experienced in the field of ecological risk assessment.

In addition, as a trustee, the department is required to conduct damage assessments and negotiate penalties with those responsible for chemical releases and oil spills that harm the environment.

To do this effectively, the department must have expertise in-house to support the claims made by the State. It is difficult for the department to make its case and negotiate successfully without a credible expert in the area of natural biology and ecological risk assessment. This is a very specialized field of study and the expertise will support all the programs of the environmental health administration.

SECTION 2. Chapter 128D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§128D- Ecological risk assessor.** The department may establish a permanent exempt position for an ecological risk assessor for the purpose of assessing ecological risks and damages. The position shall be appointed by the director without regard to chapters 76 and 77. The funds for this position shall come from the environmental response revolving fund established in section 128D-2; provided that

the duties of the ecological risk assessor shall bear a rational nexus to the intent and purposes of chapter 128D."

PART II

SECTION 3. Section 321-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of health, with the approval of the governor, may prescribe such rules as it deems necessary for the public health or safety respecting:

(1) The occupations or practices of laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, [sanitarians, asbestos inspectors, asbestos management planners, asbestos abatement project designers, lead inspectors, lead risk assessors, lead abatement workers, lead abatement supervisors, and lead abatement project designers;] and environmental health professionals;
(2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for these occupations or practices may be issued;
(3) The health, habits, character, practices, standards, or conduct of persons holding these certificates or permits; or
(4) The grounds or causes for revoking or suspending these certificates or permits.

The rules shall have the force and effect of law."

PART III

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 212 S.B. NO. 1026

A Bill for an Act Relating to the Training of Emergency Medical Services Personnel.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-224, Hawaii Revised Statutes, is amended to read as follows:

"**§321-224 Department of health, functions, duties.** In addition to other functions and duties assigned under this part, the department shall:

(1) Regulate ambulances and ambulance services;
(2) Establish emergency medical services throughout the State, which shall meet the requirements of this part, subject to section 321-228;
(3) [Consult] Review and approve the curricula and syllabi of training courses offered to emergency medical services personnel who provide basic, intermediate, and advanced life support, consult and coordinate

with the University of Hawaii, or any other accredited community college, college, or university, or any professional organization that provides emergency medical services training, regarding the training for basic [life support personnel], intermediate, and advanced life support personnel, as provided in section 321-229;

(4) Collect and evaluate data for the continued evaluation of the state system, subject to section 321-230;

(5) Coordinate emergency medical resources and the allocation of the state system's services and facilities in the event of mass casualties, natural disasters, national emergencies, and other emergencies, ensuring linkage to local, state, and national disaster plans, and participation in exercises to test these plans;

(6) Establish, administer, and maintain a communication system for the state system;

(7) Assist each county in the development of a "911" emergency telephone system;

(8) Secure technical assistance and other assistance and consultation necessary for the implementation of this part, subject to section 321-230;

(9) Implement public information and education programs to inform the public of the state system and its use, and disseminate other emergency medical information, including appropriate methods of medical self-help and first-aid, and the availability of first-aid training programs in the State;

(10) Establish standards and provide training for dispatchers in the state system, and maintain a program of quality assurance for dispatch equipment and operations;

(11) Establish a program that will enable emergency service personnel to provide early defibrillation;

(12) Establish within the department the emergency medical service system for children;

(13) Consult with the advisory committee on matters relating to the implementation of this part; and

(14) Establish and maintain standards for emergency medical services course instructor qualifications and requirements for emergency medical services training facilities."

SECTION 2. Section 321-229, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The University of Hawaii shall [be responsible for the] provide training [of] courses in basic [life support], intermediate, and [[]advanced[]] life support for emergency medical services personnel. The curricula and syllabi of these courses shall be approved in advance by the department of health. The curricula and syllabi of courses for ambulance personnel shall be consistent with the scope and level of the practice of emergency medical services associated with emergency ambulance personnel certification defined by the board of medical examiners under part II of chapter 453."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 213 S.B. NO. 1055

A Bill for an Act Relating to Unclaimed Financial Assistance Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to broaden the scope of the financial assistance benefits which are recoverable and to have them revert back to the program's appropriation from which the funds were expended, and to allow the department to offset any overpayments that are still owed by the household prior to the reversion of the funds back to the program's appropriation.

SECTION 2. Section 346-39.5, Hawaii Revised Statutes, is amended to read as follows:

"[[]§346-39.5[]] **Unclaimed financial assistance balances in electronic [benefits] benefit transfer accounts.** If there is a balance of financial assistance benefits in an electronic [benefits] benefit transfer account, that balance shall revert back to the [State] program's appropriation from which the funds were expended upon the death of [the] a client who has no surviving family member receiving assistance in the same financial assistance case or upon abandonment of the financial assistance account. Prior to the reversion to the program's appropriation from which the funds were expended, the department may use the balance of the household's electronic benefit transfer account to offset any outstanding overpayments still owed by the household.

For purposes of this section, financial assistance benefits refer to[:

(1) Temporary assistance to families with minor dependents;

(2) General assistance to households without minor dependents; or

(3) Aid to the aged, blind, and disabled program.]

cash payments authorized by the department to be issued through the electronic benefit transfer system. A financial assistance account shall be considered abandoned when there is no debit transaction to the account for a period of ninety consecutive calendar days [after the effective date of closure of the financial assistance case]."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 214 S.B. NO. 1071

A Bill for an Act Relating to Securities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many small businesses in Hawaii with significant potential are unable to obtain access to equity capital. Small businesses, particularly new business start-ups, often find it difficult to secure venture capital for financing in their early stages. Relatively few venture capitalists, for example, are willing to invest in early-stage financing opportunities. Furthermore, initial public

offerings may not be right for most small companies. The major sources of financing for average new small businesses are owners' savings, loans from commercial banks, and funds from relatives and friends.

Many states, however, have allowed a new kind of equity financing, the Small Corporate Offerings Registration (SCOR), a uniform registration system that allows a company to raise up to $1,000,000 by selling common stock directly to the public for at least $5 per share. The legislature finds that SCOR offerings, which are registered with the State, cut through many of the existing barriers that prevent small companies from obtaining financing. Offerings may be sold to anyone, including family members, acquaintances, and other interested investors, in amounts as little as $1,000, and shares may be easily resold.

The legislature further finds that SCOR provides an additional means by which new capital may be brought to Hawaii. The Small Business Administration will allow the use of SCOR documents to establish the Angel Capital Electronic Network (ACE-Net) in Hawaii. This is a nationwide directory of "angels" or high net worth individual investors who are seeking investments in high growth companies. SCOR and the accredited investor exemption set forth in this bill will supplement and complement the small business investment program, reduce the amount of disclosure required of larger and more complicated public offerings, and attract additional private sector investment.

Existing state securities laws, however, may prevent the implementation of the SCOR uniform registration system. The federal securities laws governing the private sale of securities are collectively known as "Regulation D". The State's response to Regulation D is the Uniform Securities Act (Modified), which is contained in chapter 485, Hawaii Revised Statutes. Pursuant to the Small Business Incentive Act of 1980, the North American Securities Administrators Association has developed "Form U-7", a question and answer disclosure document for small companies that seek to provide a complete listing of all disclosure issues that could apply in any small company offering exempt from the Securities and Exchange Commission registration under Rule 504 of Regulation D.

The legislature finds that Form U-7 satisfies the prospectus required for registration by qualification under the Uniform Securities Act; provided that all of the qualifications in the instructions for use of the form are fulfilled. The legislature further finds that allowing SCOR registration will assist Hawaii's businesses to obtain needed financing and is consistent with the Hawaii State Planning Act's economic priority guidelines under section 226-103(a), Hawaii Revised Statutes, to seek "a variety of means to increase the availability of investment capital for new and expanding enterprises" to "stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy."

SECTION 2. Chapter 485, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§485-A Prospectus; small corporate offerings registration form.** (a) The prospectus required for registration by qualification under section 485-10(b)(3) may be satisfied by the Small Corporate Offerings Registration Form (Form U-7) adopted by the North American Securities Administrators Association; provided that all of the qualifications in the instructions for use of the form are fulfilled.

(b) The commissioner shall adopt rules pursuant to chapter 91 to implement this section.

§485-B General announcements of proposed offerings to accredited investors. (a) No transaction shall be exempt under section 485-6(16) unless it

complies with this section. A general announcement of a proposed offering for which the issuer is claiming the exemption under section 485-6(16), may be made by any means and shall include only the following information unless specifically permitted by the commissioner:

(1) The name, address, and telephone number of the issuer of the securities;
(2) The name, a brief description, and price, if known, of any security to be issued;
(3) A brief description of the business of the issuer in twenty-five words or less;
(4) The type, number, and aggregate number of securities being offered;
(5) The name, address, and telephone number of the person to contact for additional information; and
(6) A statement that:
    (A) Sales will only be made to accredited investors;
    (B) No money or other consideration is being solicited or will be accepted by way of this general announcement; and
    (C) The securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(b) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under section 485-6(16).

(c) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (a), if such information:

(1) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
(2) Is delivered after the issuer reasonably believes that the prospective purchase is an accredited investor.

(d) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(e) For the purposes of this section, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a)."

SECTION 3. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

"**§485-6 Exempt transactions.** The following transactions are exempted from sections 485-4.5, 485-8, and 485-25(a)(7):

(1) Any isolated nonissuer transaction, whether effected through a dealer or not;
(2) Any nonissuer distribution of an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;
(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
(6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
(9) Any transaction pursuant to an offer directed by the offerer to not more than twenty-five persons (other than those designated in paragraph (8)) in the State during any period of twelve consecutive months, whether or not the offerer or any of the offerees is then present in the State, if all buyers represent that they are purchasing for investment (rather than with a present view to resale) and the seller reasonably accepts their representations as true, and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer;
(10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;
(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;
(13) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease which entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;
(14) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the

apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words ''apartment'', ''condominium'', and ''project'' are defined as they are defined in section 514A-3; [and]

(15) Any transactions not involving a public offering, and in addition, any categories of transactions effected in accordance with any rules the commissioner may issue under chapter 91 pursuant to this paragraph with a view to uniformity with federal law[;] and

(16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:

(i) The issuer reasonably believes that the sale is to persons who are accredited investors;

(ii) The issuer is not in the development stage, without specific business plan or purpose;

(iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and

(iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;

(B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:

(i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;

(C) Subparagraph (B) shall not apply if:

(i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or

(iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;

(D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this state, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section 485-C[2], and a $200 filing fee; and

(E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a)."

SECTION 4. In codifying the new sections added to chapter 485, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. Prior to amendment "." appeared here.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

ACT 215 H.B. NO. 328

A Bill for an Act Relating to Substance Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definition of "certified substance abuse staff" to read as follows:

""Certified substance abuse staff" means professionals and paraprofessionals with current full certification as substance abuse counselors or program administrators under chapter 321, and physicians who hold a current American Society of Addiction Medicine certificate[.] or who are board certified in addiction psychiatry."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 216 H.B. NO. 411

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 437, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§437- New or used motor vehicle sales and lease contracts.** Regardless of whether or not the buyer has taken possession of the motor vehicle, a new or used motor vehicle purchase or lease agreement by a salesperson or dealer shall be void if the agreement is contingent upon the financing of the purchase and, pursuant to the financing or credit application signed at the time of purchase, the buyer is unable to qualify."

SECTION 2. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

(1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
(2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
(3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
(4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
(5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
(6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
(7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
(8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen years of age; in the case of a

partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;

(9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;

(10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;

(11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase;

(12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;

(13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;

(14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;

(15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;

(16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;

(17) Being a salesperson or dealer:

(A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;

(B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;

(C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;

(D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction; [or]

(E) Has engaged in any improper business conduct, including but not limited to employing, contracting with, or compensating consumer consultants; or

(F) Has sold or leased a new or used motor vehicle, other than at auction, without written documentation that contains the following provision printed legibly in at least fourteen point bold typeface print, upon which the salesperson or dealer shall appropriately indicate the type of sale, and upon which both the customer and salesperson or dealer shall place their initials in the designated spaces, prior to the signing of the contract of sale or lease:

"This (IS) (IS NOT) a door-to-door sale. There (IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this purchase.

Customer's Initials Salesperson's or Dealer's Initials";

(18) Being an applicant or holder of a dealer's license:
(A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
(B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
(C) Has sold or proposed to sell new motor vehicles without being franchised therefor;

(19) Being an applicant or holder of an auction's license has sold or proposed to sell new motor vehicles without being franchised therefor; or

(20) Being an applicant for a salesperson's license:
(A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer; or
(B) Intends to be employed as a salesperson for more than one dealer."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 217 H.B. NO. 500

A Bill for an Act Relating to Firearms.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii is widely recognized as a community relatively free of violence involving firearms. The legislature further finds that this low rate of violence is attributable to our strict controls on the possession and use of firearms within our State. However, the legislature recognizes

that there is a need to expand our visitor industry by developing niche markets, such as recreational hunting, that would encourage visitors who may want to enjoy Hawaii's optimal climate and scenic landscapes while also engaging in legal recreational firearms activities.

The purpose of this Act is to allow nonresident aliens who are visiting the State for the purposes of engaging in recreational target shooting or game hunting to be allowed to bring legal firearms into the State under certain conditions for such limited purposes.

SECTION 2. Section 134-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every person arriving in the State who brings or by any other manner causes to be brought into the State a firearm of any description, whether usable or unusable, serviceable or unserviceable, modern or antique, shall register the firearm within three days after arrival of the person or of the firearm, whichever arrives later, with the chief of police of the county of the person's place of business or, if there is no place of business, [such] the person's residence or, if there is neither a place of business nor residence, the person's place of sojourn[; provided that no]. A nonresident alien [shall be allowed to] may bring firearms [a firearm of any description into the State.] not otherwise prohibited by law into the State for a continuous period not to exceed ninety days; provided that the person meets the registration requirement of this section and the person possesses:

(1) A valid Hawaii hunting license procured under chapter 183D, part II, or a commercial or private shooting preserve permit issued pursuant to section 183D-34;

(2) A written document indicating the person has been invited to the State to shoot on private land; or

(3) Written notification from a firing range or target shooting business indicating that the person will actually engage in target shooting.

The nonresident alien shall be limited to a nontransferable registration of not more than ten firearms for the purpose of the above activities."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 218 H.B. NO. 519

A Bill for an Act Relating to the Hawaii Teacher Standards Board.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purposes of this Act are to extend the sunset date for the Hawaii teacher standards board and for the law providing for the issuance of certificates to teachers who are not required to obtain a license or credential from the teacher standards board to June 30, 2010; and to provide for staggered terms for board members.

SECTION 2. Section 302A-501, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purposes of sections 302A-801 to 302A-808:

"Board" means the Hawaii teacher standards board.

"Credential" means an emergency or temporary license issued under this chapter based on standards and guidelines set by the board.

"License" means the document signifying the board's grant of permission to practice the profession of teaching.

"Teacher" means an employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.

This subsection is repealed on June 30, [2000.] 2010."

SECTION 3. Section 302A-801, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Appointed board members shall serve three-year terms[.]; provided that the initial terms of the appointed members that commence after June 30, 2000, shall be staggered, as follows:

(1) Three members to serve three-year terms;

(2) Three members to serve two-year terms; and

(3) One member to serve a one-year term."

SECTION 4. Act 122, Session Laws of Hawaii 1996, section 7, is amended to read as follows:

"SECTION 7. This Act shall take effect upon its approval, except that section 2 shall take effect retroactive to July 1, 1995, and shall be repealed on June 30, [2000.] 2010."

SECTION 5. Section 302A-809, Hawaii Revised Statutes, is amended to read as follows.

"**[[]§302A-809[]] Repeal.** This subpart D, sections 302A-801 to 302A-809, is repealed on June 30, [2000.] 2010."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 219 H.B. NO. 602

A Bill for an Act Relating to Registration of a Trailer.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-52.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within [twenty] thirty calendar days of the transfer of registered ownership of a trailer, the transferee shall forward the certificate of registration to

the director of finance who shall file the certificate. Whenever a transferee fails to comply with this section, the director of finance shall charge the transferee a fee of [$5,] $50, in addition to the fee provided in this section, for the issuance of a new certificate of registration."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 220 H.B. NO. 635

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is in the public interest to encourage the development of health care in the State. The legislature also finds that Hilo Residency Training Program, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in Hilo and thereby serves the public.

The legislature further finds that Hilo Residency Training Program, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $15,000,000 in one or more series for the purpose of assisting Hilo Residency Training Program, Inc., in financing, refinancing, or both, of one or more of the following:

(1) Retirement of outstanding debt on Hilo Residency Training Program, Inc.'s existing health care facilities;
(2) Retirement of outstanding debt and purchase of leases on the existing equipment used in connection with Hilo Residency Training Program, Inc.'s existing health care facilities;
(3) Planning, design, construction, and operation of new additions to Hilo Residency Training Program, Inc.'s existing health care facilities;
(4) Acquisition and installation of additional equipment and other assets for use in connection with Hilo Residency Training Program, Inc.'s existing health care facilities; and
(5) Renovation or repair of Hilo Residency Training Program, Inc.'s existing health care facilities.

The legislature finds and determines that the activities and facilities of Hilo Residency Training Program, Inc., constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and that the financing thereof is assistance to health care facilities.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds issued in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2002.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 221 H.B. NO. 715

A Bill for an Act Relating to Registration of Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-49, Hawaii Revised Statutes, is amended to read as follows:

"**§286-49 Registration of vehicles under two or more names.** Unless otherwise specifically stated by a written [form provided by the director of finance,] document, any vehicle registered in the names of two or more persons shall be presumed to be owned in joint tenancy."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 222 H.B. NO. 743

A Bill for an Act Relating to Advanced Practice Registered Nurses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article I to be appropriately designated and to read as follows:

"**§432:1- Coverage and reimbursement for services of advanced practice registered nurses.** All individual and group hospital and medical service plan contracts and medical service corporation contracts under this article shall

provide reimbursement for health plan-covered services provided by advanced practice registered nurses recognized pursuant to chapter 457."

SECTION 2. Section 386-1, Hawaii Revised Statutes, is amended by amending the definitions of "medical care", "medical services", or "medical supplies", to read as follows:

"'"Medical care", "medical services", or "medical supplies"[,] means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the work injury requires, and includes such care, services, and supplies rendered or furnished by a licensed or certified physician, dispensing optician, physical therapist, nurse, advanced practice registered nurse as recognized pursuant to chapter 457, or masseur."

SECTION 3. Section 431:10A-116, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10A-116 Coverage for specific services.** Every person insured under a policy of accident and sickness insurance delivered or issued for delivery in this State shall be entitled to the reimbursements and coverages specified below:

(1) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides for reimbursement for any visual or optometric service which is within the lawful scope of practice of a duly licensed optometrist, the person entitled to benefits or the person performing the services shall be entitled to reimbursement whether the service is performed by a licensed physician or by a licensed optometrist. Visual or optometric services shall include eye or visual examination, or both, or a correction of any visual or muscular anomaly, and the supplying of opthalmic materials, lenses, contact lenses, spectacles, eyeglasses, and appurtenances thereto[.];

(2) Notwithstanding any provision to the contrary, for all policies, contracts, plans, or agreements issued on or after May 30, 1974, whenever provision is made for reimbursement or indemnity for any service related to surgical or emergency procedures which is within the lawful scope of practice of any practitioner licensed to practice medicine in this State, reimbursement or indemnification under such policy, contract, plan, or agreement shall not be denied when such services are performed by a dentist acting within the lawful scope of the dentist's license[.];

(3) Notwithstanding any provision to the contrary, whenever the policy provides reimbursement or payment for any service which is within the lawful scope of practice of a psychologist licensed in this State, the person entitled to benefits or performing the service shall be entitled to reimbursement or payment, whether the service is performed by a licensed physician or licensed psychologist[.];

(4) Notwithstanding any provision to the contrary, each policy, contract, plan, or agreement issued on or after February 1, 1991, except for policies which only provide coverage for specified diseases or other limited benefit coverage, but including policies issued by companies subject to chapter 431, article 10A, part II and chapter 432, article 1 shall provide coverage for screening by low-dose mammography for occult breast cancer as follows:

    (A) For women thirty-five to thirty-nine years of age, one baseline mammogram;

(B) For women forty to forty-nine years of age, a mammogram every two years;

(C) For women fifty years of age and older, an annual mammogram; and

(D) For a woman of any age with a history of breast cancer or whose mother or sister has had a history of breast cancer, a mammogram upon the recommendation of the woman's physician.

The services provided in this paragraph are subject to any coinsurance provisions which may be in force in these policies, contracts, plans, or agreements. The commissioner shall annually review the age and frequency guidelines for mammographic screening recommended by the American Cancer Society, and shall accordingly adjust the age and frequency requirements under subparagraphs (A) to (C) by rule, if necessary.

For the purpose of this paragraph, the term ''low-dose mammography'' means the x-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad midbreast, with two views for each breast. An insurer may provide the services required by this paragraph through contracts with providers; provided that the contract is determined to be a cost-effective means of delivering the services without sacrifice of quality and meets the approval of the director of health[.];

(5) (A) (i) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides coverage for the children of the insured, that coverage shall also extend to the date of birth of any newborn child to be adopted by the insured; provided that the insured gives written notice to the insurer of the insured's intent to adopt the child prior to the child's date of birth or within thirty days after the child's birth or within the time period required for enrollment of a natural born child under the policy, contract plan, or agreement of the insured, whichever period is longer; provided, however, if the adoption proceedings are not successful, the insured shall reimburse the insurer for any expenses paid for the child[.]; and

(ii) Where notification has not been received by the insurer prior to the child's birth or within the specified period following the child's birth, insurance coverage shall be effective from the first day following the insurer's receipt of legal notification of the insured's ability to consent for treatment of the infant for whom coverage is sought[.];

and

(B) When the insured is a member of a health maintenance organization (HMO), coverage of an adopted newborn is effective:

(i) From the date of birth of the adopted newborn when the newborn is treated from birth pursuant to a provider contract with the health maintenance organization, and written notice of enrollment in accord with the health maintenance organization's usual enrollment process is provided within thirty days of the date the insured notifies the health maintenance organization of the insured's intent to adopt the infant for whom coverage is sought; or

(ii) From the first day following receipt by the health maintenance organization of written notice of the insured's ability to consent for treatment of the infant for whom coverage is sought and enrollment of the adopted newborn in accord with the health maintenance organization's usual enrollment process if the newborn has been treated from birth by a provider not contracting or affiliated with the health maintenance organization[.]; and

(6) Notwithstanding any provision to the contrary, any policy, contract, plan, or agreement issued or renewed in this State shall provide reimbursement for services provided by advanced practice registered nurses recognized pursuant to chapter 457. Services rendered by advanced practice registered nurses are subject to the same policy limitations generally applicable to health care providers within the policy, contract, plan, or agreement."

SECTION 4. Section 431:10C-103.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Personal injury protection benefits, with respect to any accidental harm, means all appropriate and reasonable treatment and expenses necessarily incurred as a result of the accidental harm and which are substantially comparable to the requirements for prepaid health care plans, including medical, hospital, surgical, professional, nursing, advanced practice nursing recognized pursuant to chapter 457, dental, optometric, chiropractic, ambulance, prosthetic services, products and accommodations furnished, x-ray, psychiatric, physical therapy pursuant to prescription by a medical doctor, occupational therapy, rehabilitation, and therapeutic massage by a licensed massage therapist when prescribed by a medical doctor."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 223 H.B. NO. 765

A Bill for an Act Relating to Motor Vehicle Rental Industry.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of $2 a day, except that for the period of September 1, 1999, to August 31, 2007, the tax shall be $3 a day, or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall

be levied upon the lessor[.]; provided that the tax shall not be levied on the lessor during the period September 1, 1999, to August 31, 2007, if:

(1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and

(2) The repair order for the vehicle is retained by the lessor for four years for verification purposes."

PART II

SECTION 2. The purpose of this part is to promote the understandable and nondeceptive disclosure of airport concession rents and service permit fees paid to the department of transportation for access to public airports, while requiring U-drive lessors to provide annual reports showing how such expenses were computed and stating their total amounts.

SECTION 3. Section 437D-8.4, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§437D-8.4[]] License and registration fees.** (a) Notwithstanding any law to the contrary, a lessor may visibly pass on to a lessee:

(1) The general excise tax attributable to the transaction;

(2) The vehicle license and registration fee and weight taxes, prorated at 1/365th of the annual vehicle license and registration fee and weight taxes actually paid on the particular vehicle being rented for each full or partial twenty-four hour rental day that the vehicle is rented; provided the total of all vehicle license and registration fees charged to all lessees shall not exceed the annual vehicle license and registration fee actually paid for the particular vehicle rented; [and]

(3) The rental motor vehicle surcharge tax as provided in section 251-2 attributable to the transaction[.]; and

(4) The rents or fees paid to the department of transportation under concession contracts, negotiated pursuant to chapter 102, or service permits, granted pursuant to title 19, Hawaii Administrative Rules, provided that:

(A) The rents or fees are limited to amounts that can be attributed to the proceeds of the particular transaction;

(B) The rents or fees shall not exceed the lessor's net payments to the department of transportation made under concession contract or service permit;

(C) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts of the rents or fees paid to the department of transportation pursuant to the applicable concession contract or service permit:

(i) For all airport locations; and

(ii) For each airport location;

(D) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts charged to lessees:

(i) For all airport locations;

(ii) For each airport location; and

(iii) For each lessee;

(E) The lessor includes in these reports the methodology used to determine the amount of fees charged to each lessee; and

(F) The lessor submits the above information to the department of transportation and the department of commerce and consumer affairs within three months of the end of the preceding annual accounting period or contract year as determined by the applicable concession agreement or service permit.

The respective departments, in their sole discretion, may extend the time to submit the statement required in this subsection. If the director determines that an examination of the lessor's information is inappropriate under this subsection and the lessor fails to correct the matter within ninety days, the director may conduct an examination and charge a lessor an examination fee based upon the cost per hour per examiner for evaluating, investigating, and verifying compliance with this subsection, as well as additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination, which shall relate solely to the requirements of this subsection, and which shall be billed by the departments as soon as feasible after the close of the examination. The cost per hour shall be $40 or as may be established by rules adopted by the director. The lessor shall pay the amounts billed within thirty days following the billing. All moneys collected by the director shall be credited to the compliance resolution fund.

(b) A representation by the lessor to the lessee which states that the visible pass on of the charges in [paragraphs (1) to (3)] this section is mandatory or that it is a government assessment upon the consumer shall be a per se violation of section 480-2."

PART III

SECTION 4. The legislature determines that there is in the state highway fund at least $11,000,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state highway fund created by section 248-8, Hawaii Revised Statutes, the sum of $11,000,000 for fiscal year 1999-2000 to be deposited into the general fund.

SECTION 5. The legislature determines that there is in the state highway fund at least $11,000,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state highway fund created by section 248-8, Hawaii Revised Statutes, the sum of $11,000,000 for fiscal year 2000-2001 to be deposited into the general fund.

PART IV

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval,

(Approved July 2, 1999.)

ACT 224 H.B. NO. 797

A Bill for an Act Relating to Outdoor Recreation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 183D-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A hunting license shall be issued to a person by an agent of the department upon:

(1) Written application in the form prescribed by the department;
(2) Payment of a hunting license fee or any other hunting related fee the board may require as provided in this chapter; except that payment of the fee shall be waived for any employee of the department who is required to have a license to carry out duties of the department; and
(3) Showing of a valid Hawaii hunter education certificate or written exemption issued under section 183D-28[.] or upon showing proof of completion of an approved hunter education course described in section 183D-28(b)(2).

The application shall require a statement under oath of the applicant's name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes."

SECTION 2. Section 183D-28, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person who meets the minimum age requirements adopted pursuant to subsection (c) shall be exempt from the requirements of subsection (a) if the person:

(1) Was born before January 1, 1972, and at one time possessed a hunting license issued by the State; provided that the person shows satisfactory proof to the department that the person had possessed the hunting license; or
(2) Has successfully completed a course or program of hunter education and safety which is approved by the International Hunter Education Association and meets the requirements of chapter 12 of the United States Fish and Wildlife Service Federal Aid Manual, as revised; provided that the person shows satisfactory proof [to the department] in the form of a certificate, wallet card, or other document issued by a state [or], province or country [agency] evidencing successful completion of the course or program.

Upon application and satisfaction of the requirements of [either paragraphs] paragraph (1) [or (2)], the department shall issue a written exemption which shall be valid for the life of the person. The department shall develop and maintain a list of approved hunter education courses described in paragraph (2) for reference by the public and license agents."

SECTION 3. Section 183D-34, Hawaii Revised Statutes, is amended to read as follows:

"**§183D-34 Private and commercial shooting preserve and farmer's license.** (a) For the purpose of encouraging private and commercial shooting preserves, game bird farming, and the domestication and propagation of game birds, a license authorizing the licensee to engage in the business of conducting a private and commercial shooting game preserve, or breeding and selling game birds, as limited in this section, shall be issued by the department, pursuant to rules as may be adopted by the department, to any responsible resident person duly applying therefor. The licenses shall expire on June 30 of each year.

(b) Any other law to the contrary notwithstanding, a commercial or private shooting preserve licensee may permit a nonresident hunter to take game birds that are the exclusive property of the private or commercial shooting preserve, pursuant to section 183D-41, on a designated shooting preserve, without a hunting license as required by section 183D-21; provided that the nonresident hunter has been issued, and is in possession of, a valid hunting license issued within the previous five years by [the nonresident hunter's state or Canadian province of residence] any other state or country, or proof of having completed a hunter education training course. The department may adopt rules to administer this subsection. The licensee shall include, in each quarterly report required under section 183D-39, additional information on the number of nonresident hunters exempted from section 183D-21 under this subsection, the number of hunting days per unlicensed nonresident hunter, and the amount of fees collected. The information shall be on a form or in a format as may be prescribed by the department. The department may require the licensee to provide any other information that it deems necessary.

(c) The fee for private and commercial shooting preserve and farmer's licenses shall be set by the department; provided that the department may authorize any governmental agency to breed and sell game birds and may authorize any person to possess lawfully obtained game birds. In addition to any other applicable fees, private and commercial shooting preserve licensees shall remit, with their quarterly report, a fee equal to the current nonresident hunting license fee, as established in section 183D-22(b)(2), per each nonresident hunter exempted from the licensing requirement under subsection (b); provided that for each nonresident hunter who participates in one day or less of hunting during a calendar year, the fee shall be fifty per cent of the current nonresident hunting license fee. The fees collected under this subsection shall be deposited into the wildlife revolving fund."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 225 H.B. NO. 980

A Bill for an Act Relating to Irrigation Water Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 167-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon the board's certification, the chairperson[,] or the chairperson's designee[,] shall determine the acreage assessment to be levied against the property of each land occupier in the following manner:

(1) By determining the amount of acreage assessments to be borne by the agricultural land and the pasture land within the project according to the proportion previously certified by the board;

(2) By dividing the amount of acreage assessment to be borne by the agricultural land by the number of cultivatable acres [of agricultural land], excluding streams, dry gulches, and uncultivatable or unusable lands, within the project and multiplying the quotient by the number of [acres] cultivatable acres of agricultural land, except the board may by rules adopted pursuant to chapter 91 set a minimum acreage assessment for uncultivatable or unusable lands, of the occupier within the project; and

(3) By dividing the amount of acreage assessment to be borne by the pasture land by the number of acres of pasture land within the project and multiplying the quotient by the number of acres of pasture land of the land occupier within the project.

The acreage assessments shall be in addition to any real property taxes, and shall be collected by the board together with the monthly water tolls. Except in the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall be a paramount lien against the entire tract, including improvements, of the land occupier of which the assessed agricultural or pasture land, or both, of the land occupier included within the project forms a part. Acreage assessments levied pursuant to this chapter shall be a lien against each lot or parcel of land assessed from the date of board certification declaring the assessment, and these liens shall have priority over all other liens except real property tax liens and prior recorded state tax liens on real property. The lien may be foreclosed in the same manner as liens for taxes in accordance with sections 231-61 to 231-70. In case of the foreclosure of any homestead land pursuant to sections 231-61 to 231-70, the foreclosure sale shall be subject to chapter 171. In the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall not constitute a lien on the property involved and notice of any delinquent acreage assessment shall be served upon either the board of land and natural resources or the Hawaiian homes commission, [as the case may be,] as applicable, for payment."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 226 H.B. NO. 997

A Bill for an Act Relating to Money Laundering.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 708A-3, Hawaii Revised Statutes, is amended by amending subsections (4) and (5) to read as follows:

"(4) This section shall not apply to any person who commits any act described in this section unless:

(a) The person believes the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is [$10,000] $8,000 or more; or

(b) The value or the aggregate value of the property transported, transmitted, transferred, received, or acquired is [$10,000] $8,000 or more.

(5) A person who violates subsection (1) [is guilty of a class B felony and may be fined not more than $25,000 or twice the value of the property involved, whichever is greater, or both.]:

(a) Is guilty of a class C felony where the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is less than $10,000, and may be fined not more than $16,000 or twice the value of the property involved, whichever is greater; or

(b) Is guilty of a class B felony where the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is $10,000 or more, and may be fined not more than $25,000 or twice the value of the property involved, which ever is greater."

SECTION 2. This Act does not affect rights and duties that were matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 227 H.B. NO. 999

A Bill for an Act Relating to Organized Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 842-3, Hawaii Revised Statutes, is amended to read as follows:

"**§842-3 Penalty; forfeiture of property.** Any person who violates this chapter shall be guilty of a class B felony [and shall be fined not more than $10,000, or sentenced to an indeterminate term of imprisonment of ten years without possibility of suspension of sentence or probation,] and shall forfeit to the State any interest or property acquired or maintained in violation of this chapter as provided in chapter 712A."

SECTION 2. Section 842-11, Hawaii Revised Statutes, is amended to read as follows:

"**§842-11 Failure to report income; penalty.** Any law to the contrary notwithstanding, no person shall [willfully] wilfully fail to report income derived, directly or indirectly, from a racketeering activity or through collection of an unlawful debt, or to pay the taxes due thereon as provided by [chapters] chapter 235

or 237. Whoever violates this section [shall be fined not more than $10,000 or imprisoned not more than ten years, or both,] shall be guilty of a class B felony and in addition shall be subject to any assessment and collection of taxes, penalties, and interest to which the State may be entitled under chapters 235 and 237."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 228 H.B. NO. 1153

A Bill for an Act Relating to Retail Liquor Sales to Minors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-101.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No minor shall purchase liquor and no minor shall have liquor in the minor's possession or custody in any motor vehicle on a public highway or in any public place, public gathering, or public amusement or at any public beach or public park; provided that notwithstanding any other law to the contrary, this subsection shall not apply to [possession]:

(1) Possession or custody of liquor by a minor in the course of delivery, pursuant to the direction of the minor's employer lawfully engaged in business necessitating [such] the delivery[, or];

(2) Possession or custody of liquor by a minor in connection with the minor's authorized participation in religious ceremonies requiring [such] the possession or custody[.]; or

(3) Any person between the ages of eighteen and twenty, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health to determine the level of incidence of liquor sales to minors."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 229

H.B. NO. 1162

A Bill for an Act Relating to Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 397-4, Hawaii Revised Statutes, is amended by amending subsection (a) read as follows:

"(a) Administration.

(1) The department shall establish a boiler and elevator inspection [bureau] branch for the enforcement of the rules adopted under this chapter and other duties assigned;

(2) The department shall:
   (A) Implement and enforce the requirements of this chapter; and
   (B) Keep adequate and complete records of the type, size, location, identification data, and inspection findings for boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter;

(3) The department shall formulate definitions and adopt and enforce standards and rules pursuant to chapter 91 that may be necessary for carrying out this chapter. Definitions and rules adopted in accordance with chapter 91 under the authority of chapter 396, prior to the adoption of this chapter that pertain to boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter, shall be continued in force under the authority of this chapter;

(4) Emergency temporary standards may be adopted without conforming to chapter 91 and without hearings to take immediate effect upon giving public notice of the emergency temporary standards or upon another date that may be specified in the notice. An emergency temporary standard may be adopted, if the director determines:
   (A) That the public or individuals are exposed to grave danger from exposure to hazardous conditions or circumstances; and
   (B) That the emergency temporary standard is necessary to protect the public or individuals from danger.

   Emergency temporary standards shall be effective until superseded by a standard adopted under chapter 91, but in any case shall be effective no longer than six months;

(5) Variances from standards adopted under this chapter may be granted upon application of an owner, user, contractor, or vendor. Application for variances must correspond to procedures set forth in the rules adopted pursuant to this chapter. The director may issue an order for variance, if the director determines that the proponent of the variance has demonstrated that the conditions, practices, means, methods, operations, or processes used or proposed to be used will provide substantially equivalent safety as that provided by the standards;

(6) Permits.
   (A) The department shall [not] issue a "permit to operate" regarding any boiler, pressure system, amusement ride, or elevator and kindred equipment if found to be safe in accordance with rules adopted pursuant to chapter 91;
   (B) The department may immediately revoke any "permit to operate" of any boiler, pressure system, amusement ride, or elevator

and kindred equipment found to be in an unsafe condition or where a user, owner, or contractor ignores prior department orders to correct specific defects or hazards and continues to use or operate the above mentioned apparatus without abating the hazards or defects;

(C) The department shall reissue a "permit to operate" to any user, owner, or contractor who demonstrates that the user, owner, or contractor is proceeding in good faith to abate all nonconforming conditions mentioned in department orders and the boilers, pressure systems, amusement rides, and elevators and kindred equipment are safe to operate; and

(D) The department shall establish criteria for the periodic reinspection and renewal of the permits to operate, and may provide for the issuance of temporary permits to operate while any noncomplying boiler, pressure system, amusement ride, and elevator and kindred equipment are being brought into full compliance with the applicable standards and rules adopted pursuant to this chapter; provided that effective July 1, 2000, the period between an initial safety inspection of a boiler, pressure system, amusement ride, or elevator and kindred equipment, or the inspection used as the basis for the issuance of a permit to operate, and any subsequent inspection, shall not exceed seven months nor be less than five months;

[(7) Certificates of inspection shall be issued for amusement rides after each inspection, if the rides are found to be safe for use;

(8)] (7) No boiler, pressure system, amusement ride, or elevator and kindred equipment which are required to be inspected by this chapter or by any rule adopted pursuant to this chapter shall be operated, except as necessary to install, repair, or test, unless a permit to operate [or certificate of inspection] has been authorized or issued by this department and remains valid; and

[(9)] (8) The department, upon the application of any owner or user or other person affected thereby, may grant time that may reasonably be necessary for compliance with any order. Any person affected by an order may for cause petition the department for an extension of time."

SECTION 2. Section 397-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any owner, user, contractor, or vendor who violates this chapter, or any safety standard promulgated hereunder or any rule [or regulation] issued under the authority of this chapter, or who violates or fails to comply with any order made under or by virtue of this chapter or under or by virtue of any rule [or regulation] of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by this chapter or by any rule [or regulation] of the department shall be assessed a civil penalty of not more than [$1,000] $10,000 for each such violation."

SECTION 3. Act 142, Session Laws of Hawaii 1998, is amended by amending section 9 to read as follows:

"SECTION 9. This Act shall take effect upon its approval and shall be repealed on July 31, 2003, except that section 3 of this Act shall not be repealed;

provided that sections 36-27 and 397-5(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act[.]; and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by Act 142, Session Laws of Hawaii 1998, shall not be repealed when section 36-27, Hawaii Revised Statutes, is reenacted pursuant to section 13 of Act 216, Session Laws of Hawaii 1997."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 230 H.B. NO. 1166

A Bill for an Act Relating to the Employment and Training Fund Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-128, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The department [is authorized to provide grants and subsidies to] may contract for employment, education, and training services from public and private agencies and nonprofit corporations. [Grants and subsidies for these services] Contracts, pursuant to subsection (b), shall be exempt from [chapter 42F] chapters 103D and 103F so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with [chapter 103D.] chapters 103D and 103F."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 231 H.B. NO. 1170

A Bill for an Act Relating to Cost-Recovery Fees for Delinquent Library Accounts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Hawaii state public library system is responsible to the taxpayers, customers, and supporters for the efficient utilization and accounting of tax revenues, maintenance and protection of library equipment and materials, and public donations of moneys and properties. An important area of accountability is the customers' delinquencies in the return of books and other library materials and payment of fees and fines, currently amounting to approximately $3,000,000. In addition, a substantial block of time is required to process the

overdue books and credit adjustments and administrative costs to collect these delinquent customers accounts.

The legislature finds that these library customers need incentives to return the borrowed materials so that other library customers will enjoy using these materials and to pay their fines and fees on a timely basis before cost-recovery fees are imposed and referred to a collection agency.

The purpose of this Act is to provide the board of education the authority to make rules and rates and set procedures for the public library system to recover delinquent library materials and administrative costs in its efforts to collect delinquent accounts from patrons.

SECTION 2. Chapter 312, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§312- Cost-recovery fees for the administration of Hawaii state public library system.** (a) The board of education may charge and add a fee to any amount due in accordance with its duties and powers under section 312-1 for:

(1) Any cost or expense incurred by the Hawaii state public library system as a result of any action taken to enforce the collection of costs of lost books and any overdue fines and fees charged to that patron after the public library system has mailed written notice demanding payment and advising that continued failure to pay the amount due may result in collection action being taken, including the imposition of cost-recovery fees, not to exceed $10, pursuant to this section. Any cost-recovery fee charged against the patron for costs, fees, and other charges may include collection agency fees, attorneys' fees, court filing fees, and similar fees incurred by the Hawaii state public library system in connection with the collection action;

(2) Hawaii public library system sponsored seminars or workshops, including educational materials in various media format; and

(3) Research and reference materials published on magnetic media, CD-ROM, or other machine-readable form.

(b) Interest shall not accrue with respect to any fee under this section.

(c) Notwithstanding any other provisions under this chapter, whenever a patron makes a partial payment of a particular delinquent amount, the amount received by the Hawaii state public library system shall first be credited to the fees charged under this section, in the order the fees were charged.

(d) The board of education shall prescribe the procedures relating to:

(1) The charging of fees;

(2) The waiver of fees;

(3) The documents, materials, and services for which fees may be charged;

(4) The amount of the fees that may be assessed and charged to a library patron;

(5) The accumulated amount of lost library material costs, fines, or fees;

(6) The period of time that the lost library materials costs, fines, or fees must remain unpaid before they may be referred to a collection agency for collection pursuant to rules adopted under chapter 91; and

(7) The notification of persons with delinquent accounts of the additional fees to be charged by the collection agency prior to the referral to the collection agency.

(e) The state librarian may waive any fee imposed by the Hawaii state public library system under chapter 312 in cases of hardship as prescribed by rules adopted under chapter 91.

(f) Upon its collection, the cost-recovery fee shall be deposited into the libraries special fund established by section 312-3.6 and shall be expended as prescribed by law."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 232 H.B. NO. 1177

A Bill for an Act Relating to Abandoned Vessels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 200, Hawaii Revised Statutes, is amended by amending the title of part IV to read as follows:

"PART IV. VESSELS ABANDONED ON BUSINESS PREMISES OF PERSONS ENGAGED IN REPAIR BUSINESS, PRIVATE MARINAS, AND YACHT CLUBS"

SECTION 2. Section 200-51, Hawaii Revised Statutes, is amended to read as follows:

"[[]§200-51[]] Disposition of vessels by persons in vessel repair business[.], private marinas, or yacht clubs. When any person abandons a vessel upon the premises of a vessel repair business, a private marina, or a yacht club, the owner of the business or private marina, or the owner's representative, or the designated representative of the yacht club, may sell or dispose of the vessel in accord with this part."

SECTION 3. Section 200-52, Hawaii Revised Statutes, is amended to read as follows:

"[[]§200-52[]] When vessel deemed abandoned. A vessel shall be deemed to be abandoned upon satisfaction of all the following conditions:

(1) The service requested or required by a person whose vessel is navigated, towed, or brought to a vessel repair business, private marina, or yacht club, such as mooring, storage, towing, and rendering estimates of the cost of repairs, has been performed;

(2) No authorization is given to perform any further service respecting the vessel, or to allow mooring, or storage, but the vessel is left on the repair business, private marina, or yacht club premises;

(3) The owner of the repair business or private marina, or the owner's authorized representative, or the designated representative of the yacht club, has given notice by registered or certified mail, to the registered owner of the vessel at the address on record at the vessel repair business, private marina, or yacht club, and the address on record [in] at the department or United States Coast Guard, and to any person with a

recorded interest in the vessel stating that, if the vessel is not repossessed within thirty days after the mailing of the notice, it will be sold or disposed of. The notice also shall contain a description of the vessel and its location. The notice need not be sent to an owner or any person with an unrecorded interest in the vessel whose name or address cannot be determined[;] and, absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five calendar days after the mailing; and

(4) The vessel is not repossessed within the thirty-day period."

SECTION 4. Section 200-53, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§200-53[]] Sale or disposition of vessel.** When a vessel is abandoned, the owner of the vessel repair business, or private marina, or the owner's authorized representative, or the designated representative of the yacht club, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than five calendar days after the publication of the advertisement. Upon the sale or disposal of the vessel under this part, the owner of the vessel repair business, or private marina, or the owner's authorized representative, or the designated representative of the yacht club, shall file an affidavit with the department stating to whom the vessel was sold or, if the vessel was not sold, the manner in which the vessel was disposed of pursuant to this part."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 233 H.B. NO. 1178

A Bill for an Act Relating to Enforcement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 199-7, Hawaii Revised Statutes, is amended to read as follows:

"**§199-7 Search and seizure; forfeiture of property.** (a) Any police officer or agent of the department of land and natural resources upon whom the board of land and natural resources has conferred powers of police officers, shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource used or taken in violation of the provisions contained in chapters 6E and 6K, or title 12, or any rules adopted thereunder. For purposes of this section, "natural resource" includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds.

(b) Any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource seized is subject to forfeiture pursuant to chapter 712A.

[Notwithstanding section 712A-16 or any other law to the contrary, any natural resource forfeited shall be turned over to the department of land and natural resources for disposition as determined by that department and may be destroyed, if illegal, or may be kept and retained and utilized by the department of land and natural resources or any other state agency, or if not needed or required by the department or other state agency, may be sold at public auction in the judicial circuit in which it was seized, the auction to be held once annually at a place and time to be designated by the department and public notice thereof to be given within the judicial circuit at least once before the auction, the first notice to be not less than twenty days prior to the auction. The auction shall be conducted by a person other than an employee of the department but designated by the department.] Unless otherwise directed by the court pursuant to chapter 712A, any item, other than a natural resource, seized shall be ordered forfeited to the State for disposition as determined by the department, or may be destroyed, or may be kept and retained and utilized by the department or any other state agency. If not needed or required by the department or other state agency, the forfeited items shall be disposed of as provided by chapter 712A. Notwithstanding any other law to the contrary, any live natural resource seized may be immediately returned to its natural environment or suitable habitat or may be disposed of as determined by the department; provided that if the natural resource disposed of was unlawfully seized, the department shall be liable to the owner for the fair market value of the items disposed of.

(c) The department of land and natural resources shall compile a list of all equipment, articles, instruments, aircraft, vehicles, vessels, or any natural resource forfeited as provided in this section and shall publish the list in its annual report.

(d) Notwithstanding any other law to the contrary, the department of land and natural resources may sell or take actions to cause the sale of any perishable natural resource that is seized to prevent the waste of the natural resource and to ensure the economic value of such natural resource; provided that the department may not sell or cause the sale of any threatened or endangered species or any other species whose sale is prohibited by law. The department of land and natural resources may require the person or persons who took the natural resources to sell the seized natural resources at fair market value. The department of land and natural resources may require any person purchasing any seized natural resource to deliver the proceeds of the sale to the department of land and natural resources or its authorized representative. Any person who refuses to sell the seized natural resources at fair market value or any person who fails to deliver the proceeds of the sale, as directed by the department of land and natural resources, shall be in violation of this subsection and punishable as provided by law. The department of land and natural resources shall deposit and keep the proceeds of the sale in an interest bearing account until such time as the suspected violation is settled between the person or persons who took the natural resource, consignee or consignees, if any, and the department of land and natural resources. Should a settlement not be reached, the department of land and natural resources shall submit the proceeds of the sale to the court. The proceeds of the sale, after deducting any reasonable costs of the sale incurred by the department of land and natural resources, shall be subject to any administrative or judicial proceedings in the same manner as the seized natural resource would have been, including an action in rem for the forfeiture of the proceeds. Seizure and sale of a natural resource is without prejudice to any other remedy or sanction authorized by law."

SECTION 2. Section 712A-6, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Personal property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer:

(a) On process issued pursuant to the rules of civil procedure or the provisions of this chapter including a seizure warrant;

(b) By making a seizure for forfeiture on property seized on process issued pursuant to law; or

(c) By making a seizure for forfeiture without court process as follows:

(i) The seizure for forfeiture is of property seized incident to an arrest or search;

(ii) The property subject to seizure for forfeiture has been the subject of a prior judgment in favor of the State or any other state or the federal government in forfeiture proceeding;

(iii) The law enforcement officer has probable cause to believe that the property seized for forfeiture is directly or indirectly dangerous to health or safety; [or]

(iv) The law enforcement officer has probable cause to believe that the property is subject to forfeiture[.]; or

(v) The seizure for forfeiture is of perishable natural resources seized and sold, pursuant to section 199-7, prior to a forfeiture proceeding."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 234 H.B. NO. 1180

A Bill for an Act Relating to the License for Imported Marine Life.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 189-6, Hawaii Revised Statutes, is amended to read as follows:

"**§189-6 [Marine] Licenses for marine life from waters not within state jurisdiction [during closed seasons].** Any other provision of law to the contrary notwithstanding, wherever the possession or sale of marine life or products within the State is prohibited as for instance by a closed season, the prohibition shall not apply where the marine life or products have been taken from or caught outside of the waters of the State and the possession or sale has been licensed by the department of land and natural resources under rules adopted by the department. The department may make rules pursuant to chapter 91 governing the issuance, suspension, and revocation and all other terms of the licenses. In addition, the department may specify in the rules that any berried, undersized, or out-of-season lobsters taken from the waters of the northwestern Hawaiian islands may not be possessed and sold under authority of the license."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 235

S.B. NO. 27

A Bill for an Act Relating to Motor Vehicle Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 249-5.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) As a condition precedent to the removal of the vehicle from storage, the owner of the vehicle shall present to the director of finance a certificate of inspection that was issued after the recording of the storage with the director of finance[.] if the certificate of inspection expired during the period of storage."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 236

S.B. NO. 36

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that associations of apartment owners are increasingly burdened by the costs and expenses connected with the collection of delinquent maintenance and other common expenses.

The legislature further finds that the number of foreclosures in this State has greatly increased, and that associations of apartment owners are often required to bear an unfair share of the economic burden when purchasers in foreclosure actions exercise rights of ownership over purchased apartments without paying their share of common maintenance fees and assessments.

The legislature further finds that more frequently associations of apartment owners are having to increase maintenance fee assessments due to increasing delinquencies and related enforcement expenses. This places an unfair burden on those non-delinquent apartment owners who must bear an unfair share of the common expenses, and is particularly inequitable when a delinquent owner is also an occupant who has benefited from the common privileges and services.

The legislature further finds that there is a need for clarification regarding the authority of associations of apartment owners to use non-judicial and power of sale foreclosure procedures to enforce liens for unpaid common expenses.

The legislature further finds that there is a need for clarification as to where associations of apartment owners may deposit or hold their funds, and how they may invest their funds.

The purpose of this Act is to:

(1) Allow associations of apartment owners to collect delinquent maintenance and common expenses directly from the tenant of a delinquent owner;
(2) Clarify the law by specifying when a purchaser in a foreclosure action becomes responsible for assessments and maintenance fees;
(3) Allow associations of apartment owners the alternative remedy for collecting fees and expenses from delinquent owner-occupants by withholding common privileges and terminate common services to owner-occupied apartments until the delinquent sums are paid;
(4) Clarify that associations of apartment owners may enforce liens for unpaid common expenses by non-judicial and power of sale foreclosure procedures, as an alternative to legal action;
(5) Specify where and in what types of investments associations of apartment owners may place their funds.

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§514A- Collection from tenants.** (a) If the owner of an apartment rents or leases the apartment and is in default for thirty days or more in the payment of the apartment's share of the common expenses, the board of directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment, an amount sufficient to pay all sums due from the apartment owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Prior to taking any action under this section, the board of directors shall give to the delinquent apartment owner written notice of its intent to collect the rent owed. The notice shall:
(1) Be sent both by first-class and certified mail;
(2) Set forth the exact amount the association claims is due and owing by the apartment owner; and
(3) Indicate the intent of the board of directors to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The apartment owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the apartment's share of common expenses by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the apartment owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:
(1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;
(2) A mortgagee is in possession pending a mortgage foreclosure; or
(3) The tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the apartment owner or tenant from seeking equitable

relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the board of directors may take the actions permitted under subsection (a), the board must adopt a written policy providing for the actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the association or by the written consent of a majority of the apartment owners."

SECTION 3. Section 514A-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements of subsection (a), the bylaws shall provide for:

(1) The method of removal from office of directors; that at any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership; and provided further that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided herein, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.

(2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that each one of the particulars set forth in this section shall be embodied in the bylaws always; and provided further that any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed

bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.

(3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.

(4) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to its solicitation of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

(5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

(6) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

(7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association.

(8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership.

(9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the

project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.

(10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses.

(11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

(12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection 514A-82(b)(10).

(13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including non-judicial or power of sale foreclosure procedures authorized by chapter 667, as that chapter may be amended from time to time.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 4. Section 514A-90, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-90 Priority of lien.** (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except:

(1) [liens] Liens for taxes and assessments lawfully imposed by governmental authority against the apartment[,]; and

(2) [all] All sums unpaid on any mortgage of record [which] that was recorded prior to the recordation of a notice of a lien by the association of apartment owners, and costs and expenses including attorneys' fees provided in such mortgages.

The lien of the association of apartment owners may be foreclosed by action or by non-judicial or power of sale foreclosure procedures set forth in chapter 667, by the [manager] managing agent or board of directors, acting on behalf of the association of apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the [same.] rental owed. The [manager] managing agent or board of directors, acting on behalf of the association of apartment owners, [may,] unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the [same.] apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the [same.] unpaid common expenses owed.

(b) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment

owners chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the apartment shall be deemed to acquire title and shall be required to pay the apartment's share of common expenses and assessments beginning:

(1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;

(2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser; or

(3) Upon the recording of the deed,

whichever occurs first.

(c) No apartment owner shall withhold any assessment claimed by the association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;

(5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) An apartment owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the apartment owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII [of this chapter]; provided that an apartment owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the apartment owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end o f the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the association which are not owed.

(e) As an alternative to foreclosure proceedings under subsection (a), where an apartment is owner-occupied, the association of apartment owners may authorize its managing agent or board of directors to, after sixty days' written notice to the apartment owner and to the apartment's first mortgagee of the nonpayment of the apartment's share of the common expenses, terminate the delinquent apartment's access to the common elements and cease supplying a delinquent apartment with any and all services normally supplied or paid for by the association of apartment

owners. Any terminated services and privileges shall be restored upon payment of all delinquent assessments.

(f) Before the board of directors or managing agent may take the actions permitted under subsection (e), the board must adopt a written policy providing for such actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the association or by the written consent of a majority of the apartment owners."

SECTION 5. Section 514A-97, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) All funds collected by an association, or by a managing agent for any association, shall be:

(1) Deposited in a financial institution, including a federal or community credit union, located in the State and whose deposits are insured by an agency of the United States government;
(2) Held by a corporation authorized to do business under article 8 of chapter 412; [or]
(3) [Invested in the obligations of the United States government.] Held by the United States Treasury; or
(4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.

All funds collected by an association, or by a managing agent for any association, shall be invested only in:

(1) Demand deposits, investment certificates, and certificates of deposit;
(2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners; or
(3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board of directors. The commission may draft rules governing the handling and disbursement of condominium association funds."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 237 S.B. NO. 186

A Bill for an Act Relating to Tort Liability.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§663- Tort liability for breach of contract; punitive damages.** No person may recover damages, including punitive damages, in tort for a breach of a contract in the absence of conduct that:

(1) Violated a duty that is independently recognized by principles of tort law; and
(2) Transcended the breach of the contract."

SECTION 2. Section 663-17, Hawaii Revised Statutes, is amended to read as follows:

"**§663-17 Third-party practice; enforcement of right to [contribution.] contribution; unnamed defendants and third party defendants.** (a) A pleader may, as provided by the rules of court, bring in as a third-party defendant a person not a party to the action who is or may be liable to the pleader or to the person claiming against the pleader, for all or part of the claim asserted against the pleader in the action, whether or not liability for the claim is admitted by the pleader. A third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff as well as of the third-party defendant's own liability to the plaintiff or to the third-party plaintiff.

(b) A pleader may either (1) state as a cross-claim against a coparty any claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or (2) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tortfeasors one of whom has discharged the judgment by payment or has paid more than the joint tortfeasor's pro rata share thereof. If relief can be obtained as provided in this paragraph no independent action shall be maintained to enforce the claim for contribution.

(c) As among joint tortfeasors who in a single action are adjudged to be such, the last paragraph of section 663-12 applies only if the issue of proportionate fault is litigated between them by pleading in that action.

(d) A pleader may name as parties to a lawsuit under fictitious names defendants or third-party defendants whose names or whose responsibility for the acts complained of the pleader has been unable to ascertain with reasonable certainty. The pleading shall set forth a description of any unidentified defendant or third-party defendant and all actions already undertaken in a diligent and good faith

effort to ascertain the true identity or responsibility of any unidentified defendant or third-party defendant. The pleader may later make known to the court the identity of a defendant or third-party defendant named as a party to the lawsuit under a fictitious name. For the purposes of statutes of limitation, later identified defendants or third-party defendants shall be considered to have been named as parties to the lawsuit on the date the pleading was filed first naming them under fictitious names. Parties shall exercise reasonable diligence in ascertaining the identity or responsibility of unnamed defendants or third-party defendants. The court may make any order that justice requires to protect any party from undue burden and expense or substantial prejudice in any further proceedings involving the later identified defendants or third-party defendants."

SECTION 3. Section 607-14.5, Hawaii Revised Statutes, is amended to read as follows:

"**§607-14.5 Attorneys' fees and costs in civil actions.** (a) In any civil action in this State where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, whether or not the party was a prevailing party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees[,] and costs, in an amount to be determined by the court upon a specific finding that all or a portion of the party's claim or defense was frivolous[.] as provided in subsection (b).

(b) In determining the award of attorneys' fees and costs and the amounts to be awarded, the court must find in writing that all or a portion of the claims or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action. In determining whether claims or defenses are frivolous, the court may consider whether the party alleging that the claims or defenses are frivolous had submitted to the party asserting the claims or defenses a request for their withdrawal as provided in subsection (c). If the court determines that only a portion of the claims or defenses made by the party are frivolous, the court shall determine a reasonable sum for attorneys' fees and costs in relation to the frivolous claims or defenses.

(c) A party alleging that claims or defenses are frivolous may submit to the party asserting the claims or defenses a request for withdrawal of the frivolous claims or defenses, in writing, identifying those claims or defenses and the reasons they are believed to be frivolous. If the party withdraws the frivolous claims or defenses within a reasonable length of time, the court shall not award attorney's fees and costs based on those claims or defenses under this section."

SECTION 4. Section 663-10.9, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§663-10.9[]] Abolition of joint and several liability; exceptions.** Joint and several liability for joint tortfeasors as defined in section 663-11 is abolished except in the following circumstances:

(1) For the recovery of economic damages against joint tortfeasors in actions involving injury or death to persons[.];
(2) For the recovery of economic and noneconomic damages against joint tortfeasors in actions involving:
    (A) Intentional torts;
    (B) Torts relating to environmental pollution;
    (C) Toxic and asbestos-related torts;
    (D) Torts relating to aircraft accidents;

(E) Strict and products liability torts; or
(F) Torts relating to motor vehicle accidents except as provided in paragraph (4)[.];

(3) For the recovery of noneconomic damages in actions, other than those enumerated in paragraph (2), involving injury or death to persons against those tortfeasors whose individual degree of negligence is found to be twenty-five per cent or more under section 663-31. Where a tortfeasor's degree of negligence is less than twenty-five per cent, then the amount recoverable against that tortfeasor for noneconomic damages shall be in direct proportion to the degree of negligence assigned[.]; and

(4) For recovery of noneconomic damages in motor vehicle accidents involving tort actions relating to the maintenance and design of highways including actions involving guardrails, utility poles, street and directional signs, and any other highway-related device upon a showing that the affected joint tortfeasor was given reasonable prior notice of a prior occurrence under similar circumstances to the occurrence upon which the tort claim is based. In actions in which the affected joint tortfeasor has not been shown to have had such reasonable prior notice, the recovery of noneconomic damages shall be as provided in paragraph (3).

(5) Provided, however, that joint and several liability for economic and noneconomic damages for claims against design professionals, as defined in chapter 672, and certified public accountants, as defined in chapter 466, is abolished in actions not involving physical injury or death to persons."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 238 S.B. NO. 207

A Bill for an Act Relating to Wastewater.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 340B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§340B- Wastewater treatment certification board special fund.** (a) There is established in the state treasury a special fund to be known as the wastewater treatment certification board special fund. The following moneys collected by the board shall be deposited into the special fund:

(1) Registration fees for examinations;
(2) Renewal fees;
(3) Reciprocity fees; and
(4) Temporary certificates fees.

All interest earned or accrued on moneys deposited into the special fund shall become a part of the special fund.

(b) All moneys paid into the special fund shall be expended by the board to finance its operations."

SECTION 2. Section 340B-11, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§340B-11[]] Powers and duties of the board.** To carry out the provisions and purposes of this chapter, the board shall:

(1) Perform any and all acts and adopt, amend, or repeal such rules [and regulations] as it finds necessary or appropriate;
(2) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as deemed appropriate with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals;
(3) Receive financial and technical assistance from the federal government and other public or private agencies;
(4) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;
(5) Furnish upon request to federal, state, or interstate agencies, municipalities, educational institutions and other organizations and individuals, reports, information, and materials relating to the certification program authorized by this chapter;
(6) Revoke, suspend, or refuse to renew any certificate of any individual following a hearing before the board of the individual or the individual's designated representative, when it is determined that the individual has practiced fraud or deception; that reasonable care, judgment, or the application of the individual's knowledge or ability was not used in the performance of the individual's duties; or that the individual is incompetent or unable to properly perform the individual's duties; provided that the board gives the person concerned notice and hearing in conformity with chapter 91;
(7) Delegate those duties and responsibilities the board may deem appropriate for the purpose of administering requirements of this chapter;
(8) Establish and collect such fees for application, conduct examinations, issue or renew certificates as are necessary for the support of this chapter, and deposit all fees collected into the [State's general] wastewater treatment certification board special fund; and
(9) Oversee the development and implementation of a continuous training program if that is necessary to carry out this chapter."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 239

S.B. NO. 236

A Bill for an Act Relating to Unfair and Deceptive Practices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 481B-1.6, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§481B-1.6[]] Offers of gifts or prizes; unlawful.** (a) It shall be an unlawful practice under this chapter for any person to enforce or attempt to enforce an agreement to purchase, lease, or rent a consumer product if the offer to sell, lease, or rent was conducted in a manner not in compliance with the requirements of this chapter.

(b) It shall be an unlawful practice under this chapter for any person to offer a gift, prize, or award by means of written notice sent through the mail or by telephone with the intent to sell, lease, or rent a consumer product, or to initiate the sale, lease, or rental of a consumer product when, at the time of the offer, the consumer product and all the material terms of the sale, lease, or rental transaction, including the price, handling, shipping, delivery, or any other fee, are not clearly and conspicuously disclosed.

(c) It shall be an unlawful practice for any person to offer a gift, prize, or award by means of written notice sent through the mail or by telephone with the intent to receive a payment of any money when, at the time of the offer, all of the material terms of the transaction, including handling, shipping, delivery, or any other fee, are not clearly and conspicuously disclosed and the consumer is requested to:

(1) Further the transaction by calling a 900 number or "pay per call"; or

(2) Send payment of any money to receive or redeem the prize.

(d) Any offer of a prize made by means of written notice sent through the mail or by telephone shall include:

(1) Information on the odds of being able to receive the prize or if the odds are not calculable in advance, the factors used in calculating the odds;

(2) A statement that no purchase or payment is required to win a prize or to participate in a prize promotion; and

(3) Instructions on how to participate without purchase or payment including an address or toll-free telephone number to which a consumer may write or call for information on how to participate.

(e) It shall be an unlawful practice and a violation of this chapter for any person, in any contest or sweepstakes in which the winning entry or entries are to be determined by a drawing or some other method based on an element of chance:

(1) To promote a contest or sweepstakes in which some or all of the prizes may not be awarded, or to fail to award all prizes or awards offered, unless the person makes the following disclosures to each offeree in writing and in a conspicuous manner prior to the acceptance of the offeree's entry:

(A) That some or all of the prizes may not be awarded; and

(B) The date or dates on which a determination of winners will be made; and

(2) To offer a prize of real property unless the offeror files and maintains with the director a bond in a sum not less than $10,000, executed by the

offeror, and naming the director as the obligee and a surety company authorized to do business in the State as surety. The bond shall be continuous in form and conditioned upon the award of the real property to an eligible participant. The bond shall run to the State for the benefit of any person who failed to receive the real property due to the failure of the offeror to award the real property pursuant to the terms of the offer. The surety may cancel the bond by giving sixty days notice in writing to the director. Upon cancellation or expiration of the bond, the surety shall remain liable for any claims against the bond for a period of one year; provided that the claim arose while the bond was in effect and the director notifies the surety of any claims within ninety days of discovery of the claim."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 240 S.B. NO. 238

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to:

(1) Facilitate review and understanding of the laws relating to the continuing education requirements for real estate license renewal;
(2) Provide an option to expending time and funds for prelicensing education and examination requirements for a candidate who may have a questionable background experience that may cause a denial of licensure;
(3) Simplify and clarify prelicensing broker requirements including updating to present standards among the other states and providing more fairness to specialty areas;
(4) Provide candidates and licensees with additional real estate prelicensing examination options that include the auditor-recommended option of providing equivalency to out-of-state licensees for passage of the other state's uniform section of the examination;
(5) Ensure that real estate licensees, who renew licenses on time, will receive notice of relicensure and their new license by the start of the new licensing period;
(6) Simplify, decrease, and clarify the procedures for restoration of forfeited licenses including adding options and expanding the restoration periods;
(7) Deregulate the displaying of the licenses of associated real estate salespersons;
(8) Require the registration, rather than the licensure, of real estate brokers' branch offices;
(9) Repeal the requirement that real estate site offices be registered;
(10) Ensure that real estate recovery fund requirements do not conflict with bankruptcy laws; and

(11) Simplify and clarify registration requirements applicable to condominium hotel operators.

SECTION 2. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§467- **Continuing education.** (a) The commission shall have the authority to:

(1) Set content and other requirements for continuing education courses, providers, and instructors;
(2) Determine whether requirements have been met;
(3) Specify a mandatory core course, courses, or equivalencies for a licensing biennium;
(4) Determine how many hours of a continuing education course will be credited toward continuing education requirements for real estate licensees;
(5) Develop its own continuing education courses or approve courses developed by others; and
(6) Authorize the provision of courses taught by alternative delivery methods with interactive instructional techniques. Interactive instructional techniques may include but are not limited to:
    (A) The opportunity for immediate exchange with an instructor; and
    (B) Assessment and remediation through the assistance of computer, electronic, audio, or audiovisual interactive instruction designed to internally measure and evaluate whether students have mastered stated learning objectives.

(b) Continuing education providers shall:

(1) Certify that instructors have met the commission requirements;
(2) Ensure that instructors are competent in the subject matter of the course and are current in their knowledge of the subject matter; and
(3) Ensure that the course is based on current information, laws, and rules.

(c) Continuing education instructors shall ensure that their courses are based on current information, laws, and rules.

(d) Continuing education courses shall be designed to improve a licensee's competency, or professional standards and practice and shall:

(1) Be offered by a provider approved by the commission and either be:
    (A) Approved by the commission and delivered by an instructor certified by a commission-approved continuing education provider;
    (B) A national course delivered by an instructor certified by the National Association of Realtors or its affiliates;
    (C) A national course delivered by an instructor certified by the Building Owners and Managers Association, the Community Associations Institute, or any other national organization approved by the commission; or
    (D) Certified by the Association of Real Estate License Law Officials;
(2) Be designed to allow students to exceed minimal entry level competency in the subject matter of the course including consumer protection in real estate transactions; and
(3) Not require an examination."

SECTION 3. Section 467-8, Hawaii Revised Statutes, is amended to read as follows:

"**§467-8 Prerequisites for license, registration, or certificate.** (a) No license, registration, or certificate under this chapter shall be issued to:

(1) Any individual applying for a real estate broker or salesperson license who does not satisfy the requirements set forth in section 467-9.5;

(2) Any individual applying for a real estate broker or salesperson license unless the individual has demonstrated by passing with a grade satisfactory to the commission an examination appropriate to the license sought that the individual has a reasonable knowledge of:
   (A) Estates, interests, and rights in real property;
   (B) The documents or acts or occurrences by which property is transferred or otherwise affected;
   (C) The rights and duties of an agent;
   (D) The laws of the State relating to real estate brokers and salespersons; and
   (E) Other subjects that the commission determines to be essential for the protection of the general public in its real estate transactions;

(3) Any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing;

(4) Any partnership unless the real estate brokerage business thereof is under the direct management of a principal broker who is a general partner or employee thereof and holds a current active real estate broker's license;

(5) Any corporation unless the real estate brokerage business thereof is under the direct management of a principal broker who is an officer or employee thereof and holds a current active real estate broker's license;

(6) Any individual applying for a real estate broker's license who does not have a current [active or inactive] Hawaii real estate salesperson's license; [or]

(7) Any person with a trade name, partnership, limited liability company, or corporation that is not currently registered with the business registration division of the department of commerce and consumer affairs; provided that no real estate salesperson's license shall be approved or issued with a trade name[.]; or

(8) Any limited liability company unless the real estate brokerage business is under the direct management of a principal broker who is a member of a member-managed limited liability company or a manager of a manager-managed limited liability company or employee and holds a current active real estate broker's license.

(b) Prior to submitting to prelicensing education or examination requirements, an individual candidate may request that the commission consider a preliminary decision as to whether the individual candidate for a real estate license will be denied a real estate license pursuant to section 467-8(a)(3). The individual candidate shall submit a completed application, all information requested by the commission, and the nonrefundable application fee as provided in rules adopted by the director pursuant to chapter 91. The preliminary decision shall provide advisory guidance, shall not be construed as binding, and shall not be subject to appeal. The individual candidate seeking a preliminary decision shall not be considered an applicant for licensure. A preliminary decision that is unfavorable to the individual shall not prevent the individual from submitting a complete license application and fees after successful completion of the prelicensing requirements."

SECTION 4. Section 467-9.5, Hawaii Revised Statutes, is amended to read as follows:

"**§467-9.5 Prerequisites for examination.** (a) No individual shall be eligible for the licensing examination unless[:] the individual is:

(1) [The individual is a] A citizen of the United States, or an alien who is authorized to work in the United States, and of the age of majority;

(2) [The individual applying] Applying for the real estate salesperson examination and has satisfactorily completed a commission-approved prelicensing course for real estate salesperson candidates, which includes real estate principles[,] or [its] their equivalent[, approved or accredited] as determined by the commission;

(3) [The individual applying] Applying for the real estate broker examination [has satisfactorily completed a prelicensing course for real estate broker candidates, or its equivalent, approved or accredited by the commission;

(4) The individual applying for the real estate broker examination] and:

(A) Is currently licensed as [an active or inactive] a Hawaii real estate salesperson; [and

(B) Has been engaged in the real estate business as a licensed Hawaii real estate salesperson as determined by the commission for not less than a period of two years on a full-time basis and has practical experience in the real estate field as determined by the commission.

The commission may waive a portion of the required experience, if the individual has had other experience or education in real estate, which, in the opinion of the commission, is equivalent to the required experience, to be established by detailed explanatory affidavit or in any other manner as may be determined by the commission; or

(5)] (B) Has satisfactorily completed a commission-approved prelicensing course for real estate broker candidates, or its equivalent as determined by the commission; and

(C) Has experience as a full-time state-licensed real estate salesperson associated with a Hawaii-licensed real estate broker for the three-year period immediately prior to the licensing examination and has practical real estate salesperson experience, as certified by the principal broker or principal brokers during the subject period. The candidate shall secure commission approval of the candidate's experience certification application prior to the date of the examination. Subject to commission approval, a candidate may request equivalency for a portion of the experience requirement based on real estate license experience in another state, as determined by the commission; or

(4) [Unless specifically] Specifically authorized by the commission.

(b) Each individual shall certify on the application for examination that the prerequisites set forth in this section have been or will be satisfied prior to the date of examination. The examination score of any individual who has taken the examination without having satisfied the prerequisites set forth in this section prior to the date of examination shall be voided."

SECTION 5. Section 467-9.6, Hawaii Revised Statutes, is amended to read as follows:

"**§467-9.6 Examination.** (a) Every applicant for a real estate examination shall file an application with either the commission or the testing service agency designated by the commission pursuant to rules of the commission to provide the testing service. The application shall be in a form prescribed by the commission and

shall include a certification statement that the applicant has fulfilled or will fulfill by the date of the examination, the prerequisites for examination. Every application shall be accompanied by an examination fee as determined by the commission by rules adopted pursuant to chapters 26 and 91. Applicants shall apply for real estate licenses in the manner prescribed by the commission.

(b) The commission may prescribe the passage of a specific section or sections of the examination for different purposes, including the following:

(1) A current out-of-state licensee requesting an equivalency to the uniform part of the state prelicensing examination based on previously passing the uniform portion of another state's licensing examination or equivalent as determined by the commission. The approved equivalency will be for the respective examination passed in the other state;

(2) Equivalency to continuing education requirements as determined by the commission;

(3) Restoration of forfeited license; and

(4) Reinstatement of license due to disciplinary action, as determined by the commission;

subject to the contract with the testing service and submission of application and approval prior to application for the examination."

SECTION 6. Section 467-11, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The biennial renewal fee [shall be paid to] and completed renewal application shall be submitted to the department of commerce and consumer affairs on or before [December 31 of each even-numbered year.] the commission prescribed deadline prior to the expiration date of the license. All real estate licenses expire on December 31 of an even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee and to submit a completed renewal application shall constitute a forfeiture of the license [of the broker or salesperson.] as of January 1 of the subsequent odd-numbered year. The forfeited license [of the broker or salesperson] may be restored upon [written] approval of a completed application [therefor,]; payment of the delinquent fees and the penalty fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91[, and]; satisfaction of the applicable requirements in sections 467-8, 467-9, 467-9.5, and 467-11.5; and prior to submission of the completed application; and satisfaction of [such other requirements as the commission may impose as a condition to restoration.] the following as applicable:

(1) For a license forfeited for more than one year but less than four years, the successful completion of the commission-approved course or courses or passage of the commission-approved examination; or

(2) For a license forfeited for more than four years, the successful passage of the commission-approved examination.

(c) A real estate broker or real estate salesperson may place [that broker's or salesperson's] that person's license on an inactive status by filing an application and setting forth such information as may be prescribed or required by the commission, and such license [may] shall be renewed [biennially] on or before [December 31 of each even-numbered year] the commission prescribed deadline prior to the expiration date of the license by payment of the [proper] biennial renewal fee[.] and submission of a completed renewal application. A real estate broker or real estate salesperson may reactivate that person's inactive license by satisfying section 467-11.5, filing an application, and setting forth such information as may be prescribed or required by the commission, and [payment of] paying the proper fee."

SECTION 7. Section 467-12, Hawaii Revised Statutes, is amended to read as follows:

"**§467-12 Place of business and posting of license.** (a) A licensed real estate broker shall have and maintain a definite place of business in the State, in compliance with this chapter and the rules of the commission, and shall display therein the real estate broker's license and upon request make available any associating real estate salesperson's license.

(b) No real estate broker's branch office shall operate without a [license] registration previously obtained under and in compliance with this chapter and the rules of the commission.

[(c) A real estate broker's site office shall be registered with the commission and in compliance with this chapter and the rules of the commission.]"

SECTION 8. Section 467-18, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) The court shall proceed upon the application in a summary manner[,] and, upon the hearing thereof, the aggrieved person shall be required to show:

(1) The person is not a spouse of debtor, or the personal representative of such spouse[.];

(2) The person has complied with all the requirements of this section[.];

(3) The person has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application[.];

(4) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment[.];

(5) That by such search the person has discovered no personal or real property or other assets liable to be sold or applied, or that the person has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that the person has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized[.]; and

(6) That where the real estate broker or real estate salesperson is a debtor in a bankruptcy proceeding, the aggrieved person has obtained an order from the bankruptcy court declaring the judgment against the real estate broker or real estate salesperson to be non-dischargeable."

2. By amending subsection (e) to read:

"(e) Should the commission pay from the real estate recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or real estate salesperson, the license of the real estate broker or real estate salesperson shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No real estate broker or real estate salesperson shall be eligible to receive a new license until the expiration of at least five years from the effective date of the termination of the license and until the terminated real estate broker or real estate salesperson has repaid in full, plus interest at the rate provided for in section 478-3, the amount paid from the real estate recovery fund on the terminated real estate broker's or real estate

salesperson's account. [A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.]"

SECTION 9. Section 467-30, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, limited liability company, or corporation and shall:

(1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;

(2) Register [on an annual basis on or before December 31 of each year as a condominium hotel operator with the commission; provided that after December 31, 1996, registration shall be on a biennial basis] by submitting a completed commission application form with the commission requested information prior to conducting condominium hotel activity, and reregister on or before [December 31 of each even-numbered year.] the commission prescribed deadline prior to the registration expiration date. The registration and re-registration shall expire on December 31 of an even-numbered year. Registration information shall include but not be limited to the number of apartments managed for others as well as the number of apartments owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to $25 multiplied by the aggregate number of apartments being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;

(3) [Provide evidence of a current] Obtain and keep current a fidelity bond [or a certification statement from an insurance representative of an] from an insurance company registered with the insurance division of the department of commerce and consumer affairs [to the commission certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission, and that the]. The fidelity bond [is] shall be in an amount equal to $500 multiplied by the aggregate number of apartments in the condominium hotel operation; provided that the minimum amount of the fidelity bond required by this paragraph shall not be less than $20,000 nor greater than $100,000. The aggregate number of apartments excludes the number of apartments owned by the condominium hotel operator either as a sole proprietor, partnership, limited liability company, or corporation or those apartments included in a registered time share plan managed by a registered time share plan manager. The bond shall cover all of the condominium hotel operator's employees handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both. Upon request by the commission, the condominium hotel operator shall provide evidence of a current fidelity bond or a certification statement from an insurance representative of an insurance company registered with the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The commission may adopt rules establishing conditions and terms by which it may grant an exemption or bond alternative, or permit deductibles. No fidelity bond exemption shall be granted to a condominium hotel operator who is exempt from paragraph (1); and

(4) Pay an application fee and an initial registration or a re-registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o);

provided that this subsection shall not apply to persons who are subject to section 467-2."

SECTION 10. Section 467-1, Hawaii Revised Statutes, is amended by deleting the definition of "continuing education".

["""Continuing education" means a course:
(1) With a curriculum level above the current minimal competency entry level in any of the following areas:
  (A) Protection of the general public in its real estate transactions;
  (B) Consumer protection; or
  (C) Improvement of the licensee's competency and professional standards and practice; and
(2) That is:
  (A) Approved by the commission and delivered by an approved continuing education instructor;
  (B) A national course taught by a nationally certified instructor certified by the National Association of Realtors or its affiliates; or
  (C) A national course taught by a nationally certified instructor certified by, including but not limited to, the Building Owners and Managers Association, the Community Associations Institute, or other national organization approved by the commission;

provided that the continuing education course is offered by an approved continuing education provider. Continuing education courses shall not require an examination."]

SECTION 11. Until such time as new or revised fees are adopted by the director of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes, the fee assessed for any application:
(1) Filed after the effective date of this Act, shall be the lowest nonrenewable application fee assessed at the time of the effective date of this Act; and
(2) Existing on the effective date of this Act, shall be assessed fees pursuant to the Hawaii Administrative Rules applicable to that application prior to the effective date of this Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 13. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 241

S.B. NO. 285

A Bill for an Act Relating to Condominium Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that condominium lessees are often able to acquire the leased fee interest appurtenant to their apartments at more affordable prices when the association of apartment owners negotiates directly with the project's lessor for a bulk purchase of all of the lessor's interests by the association and its members. The legislature further finds that it is necessary to clarify the powers of the boards of directors of associations of apartment owners to enter into purchase agreements with lessors to facilitate and encourage voluntary lease to fee conversions of condominium projects in an efficient and economical manner.

SECTION 2. Chapter 514C, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . VOLUNTARY CONVERSIONS**

§514C- Definitions. As used in this part, unless the context requires otherwise:

"Lessor" means any or all of the fee simple owners and other persons having legal or equitable ownership interests in the leased fee interest appurtenant to the various condominium units in the condominium project and in the various apartment and ground leases including, but not limited to, any sublessor. The definition of "lessor" in section 514C-1 shall not apply to this part.

§514C- Power of association of apartment owners to negotiate, purchase, and sell lessor's interest. (a) The association of apartment owners may purchase the lessor's interest in the condominium project; provided that the declaration of condominium property regime shall either contain or be amended to include a provision authorizing the board of directors to effectuate such a purchase. If the lessor is also a condominium unit lessee, the lessor's lessee interest shall be disregarded in the computation of the percentage of condominium unit lessees needed to achieve the vote or written consent required to amend the declaration of condominium property regime.

(b) If the association of apartment owners is authorized to purchase the lessor's interest pursuant to this section, the following powers, in addition to any other existing powers, shall be conferred upon the association of apartment owners:

(1) To purchase or otherwise acquire, own, improve, use, and deal in and with the lessor's interest or any or all undivided interests therein;

(2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge all or any portion of its property, assessments, and funds to effectuate acquisition of the lessor's interest;

(3) To assess, as a common expense, the condominium unit lessees for the expenses incurred in acquiring the lessor's interest, or to service any debt associated therewith; and

(4) To sell the fee interest appurtenant to a condominium unit and acquired from the lessor by the association of apartment owners, to any condominium unit lessee or subsequent purchaser of such unit.

(c) No condominium unit lessee shall be compelled to purchase the portion of the fee interest of the property appurtenant to the lessee's condominium unit and acquired from the lessor by the association of apartment owners, but may instead pay

lease rent to the association of apartment owners together with the lessee's share of the common expenses incurred in acquiring the fee interest to the land, including any debt associated therewith."

SECTION 3. Chapter 514C, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"**[RIGHT OF FIRST REFUSAL] LEASE TO FEE CONVERSIONS FOR CONDOMINIUMS AND COOPERATIVE HOUSING CORPORATIONS**"

2. By designating sections 514C-1 through 514C-8 as:

"**PART I. RIGHT OF FIRST REFUSAL**"

3. By amending section 514C-3 to read:

"**[ ]§514C-3[ ] Improvements.** The right of first refusal to purchase the leased fee interest in land created by this [chapter] part shall be deemed to include the right to purchase the interest of the seller in any and all improvements on such land, other than the leasehold interest in any unit as to which the seller is the holder of the leasehold interest."

4. By amending section 514C-4 to read:

"**[ ]§514C-4[ ] Compliance with procedures not required when.** Nothing in this [chapter] part shall prohibit any lessor and association of condominium owners or cooperative housing corporation from agreeing to the sale and purchase of the leased fee interest or any part thereof."

5. By amending section 514C-5 to read:

"**§514C-5 Offer to other prospective purchasers; time limit.** No lessor shall sell the leased fee interest in any land under a condominium project or cooperative project containing one or more residential units or any part thereof to any party other than the association of apartment owners or cooperative housing corporation for that project until a right of first refusal for the purchase of that interest has been offered as required by this [chapter] part and has been rejected in writing by the board of directors, except in the case of sales to individual condominium unit lessees or cooperative unit lessees, which shall be subject to the requirements of section 514C-6.5; provided that an offer made pursuant to sections 514C-2, 514C-3, and 514C-6.5 shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of the written notice from the seller, as evidenced by the return receipts, or if the sale, through no fault of the seller, has not closed upon the purchase of one hundred per cent of the interest being sold within one hundred eighty days of receipt by the board of directors of such written notice, as evidenced by the return receipts. In the event that closing is delayed due to any fault of the seller, the deadline for closing shall be extended for a period of time equal to the delay caused by seller."

6. By amending section 514C-6.5 to read:

"**[ ]§514C-6.5[ ] Sales to individual lessees.** Notwithstanding any other [provisions] provision in this [chapter,] part to the contrary, a lessor may sell the leased fee interest in any land under a condominium project or cooperative project or any part thereof to individual condominium unit lessees or cooperative unit lessees[,]; provided that the following requirements have been complied with:

(1) No individual lessee shall be obligated to enter into a contract to purchase without having been afforded a period of at least ninety days

within which to consider the offer made by the lessor[,]; provided that the individual lessee may enter into a contract to purchase before the ninety days expires if the individual lessee so desires. The lessee shall further have the right to terminate such contract to purchase without penalty for a period of ninety days from the date the contract was first entered into;

(2) At the time any offer to sell the leased fee interest is communicated to the lessee by the lessor, the association of owners or cooperative housing corporation shall be provided with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of the lessor's intent to sell the interest, together with a complete and correct copy of the offer, which offer shall contain the full and complete terms thereof. Except as provided in paragraph (3), where the board of directors of the association of apartment owners or cooperative housing corporation has written authorization to represent its members, then the association or corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer[,]; provided that the offer shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of written notice from the seller, as evidenced by the return receipts;

(3) Any board of directors of the association of apartment owners or cooperative housing corporation may fully or partially waive its right of first refusal at any time with written notice to the lessor[,]; provided[, however,] that it shall waive its right of first refusal with respect to the leased fee interest appurtenant to a lessee's apartment at the written request of the lessee. The legislature hereby gives the board of directors of the association of apartment owners or cooperative housing corporation the authority to exercise the foregoing waiver without having to amend any bylaws, charter, or other governing documents;

(4) Notwithstanding any provision contained in any bylaws, or any amendment thereto or written authorization, authorizing the board of directors of the association of apartment owners or cooperative housing corporation to represent the individual lessees in the lease-to-fee conversion, each individual shall have the right to represent himself or herself in such lease-to-fee conversion by giving written notice of such desire to the lessor and the board of directors; and

(5) After the lessor (or its agent or representative) has been able to hold one meeting with the lessees and has been able to provide a written summary of the meeting to the lessees, then for a period of ninety days thereafter, the lessor, its agents, employees, and representatives, shall not initiate communication with the lessees regarding the offer, although such parties may respond to inquiries made by lessees."

7. By amending section 514C-7 to read:

"**[[]§514C-7[]] Violations; voidable sale.** Any sale made that violates this [chapter] part shall be voidable at the option of the association of owners or the cooperative housing corporation. If any sale is so voided, the association of owners or cooperative housing corporation shall then have the right to buy the interest which had been conveyed by virtue of such sale for the same price as pertained to the sale so voided, subject to the time restrictions contained in section 514C-5."

8. By amending section 514C-8 to read:

"[[]§514C-8[]] **Exception.** This [chapter] part shall not apply if the land under the condominium project or cooperative housing corporation subject to a leased fee interest is part of a larger tract of land and the lessor will not agree to sell the leased fee interest in the land in parts."

SECTION 4. No purchase or conveyance of the leased fee interest made prior to the effective date of this Act to or by an association of owners in a good faith belief that the purchase or conveyance was valid, and no borrowing, mortgage, or pledge by an association of owners in connection therewith shall be invalid because it was without capacity or power to do such an act or to make or receive such conveyance, transfer, or loan. Nor shall any apartment owner be excused from paying the owner's share of the common expenses incurred in acquiring the leased fee interest to the land, or to service any debt associated therewith on account of any such lack of capacity of power.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 242 S.B. NO. 513

A Bill for an Act Relating to Family Child Care.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
FAMILY CHILD CARE HOMES

§ -1 **Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

"Apartment" means a part of the property of a condominium project intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace, and patio.

"Association" means:

(1) All of the apartment owners acting as a group in accordance with the bylaws and declaration; and
(2) A nonprofit, incorporated, or unincorporated organization upon which responsibilities are imposed and to which authority is granted in a declaration that governs a planned community,

and includes any other governing body of a residential community with common elements and common interests.

"Common elements" or "common area" means:

(1) The same as defined in section 514A-3; and

(2) Real property within a planned community that is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

"Condominium" means the ownership of single apartments, with common elements, located on property within a condominium property regime.

"Declaration" means:

(1) The instrument by which property is submitted to chapter 514A, as provided in that chapter, and such declaration as from time to time amended; and

(2) Any recorded instrument, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, including any amendment or supplement to the instrument.

"Family child care home" means a private residence, including an apartment, unit, or townhouse, where care may be provided for three to no more than six children, who are unrelated to the caregiver by blood, marriage, or adoption at any given time.

"Planned community" has the same meaning as set forth in section 421J-2.

"Townhouse" means a series of individual apartments or units having architectural unity and common elements, with each apartment or unit extending from ground to roof or from the first or second floor to roof, and where apartments or units may share a common wall or be free-standing structures, including townhouse projects that are created pursuant to chapters 514A and 421J, as well as projects that are not created pursuant to those chapters but are governed by an association; provided that "townhouse" shall not include any apartments or units located in a building of more than three stories.

"Unit" means a physical portion of a planned community designated for separate ownership or occupancy.

§ **-2 Family child care homes; authorization.** (a) No association of a townhouse project shall prohibit the operation of a family child care home; provided that the family child care home:

(1) Is operated by the owner-occupant of the townhouse in which the family child care home is located;

(2) Is operated in a ground floor unit with a ground floor entry; and

(3) Complies with subsections (b) and (c).

An association of a townhouse project may impose on a family child care home conditions and limitations as set forth in subsection (e).

(b) Every family child care home located in a townhouse project shall give the association written notice of intent to commence operation as a family child care home no later than ninety days prior to commencing operation. Family child care homes that fail to give such written notice shall not commence operation. Any family child care home existing on the effective date of this Act shall notify the association within sixty days of the effective date of this Act. If a family child care home commences or continues operation without providing such notice within the prescribed time limit required under this section:

(1) The association shall be absolved of any and all liability for the operation of the family child care home; and

(2) The family child care home shall indemnify, save, and hold the association harmless from and against all claims and actions and all costs and expenses arising from the operation of the family child care home.

(c) A family child care home located in a townhouse project shall comply with the Equal Opportunity for Individuals With Disabilities Act (Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended); provided that any improvements or remodeling made to the particular apartment or unit out of which the family child care home operates, or to the corresponding common elements, to comply with the Americans With Disabilities Act as it applies to the family child care home, shall be made and paid for by the operator of the family child care home. If the Americans with Disabilities Act requires that establishment of a family child care home requires modifications or improvements to the common elements, the operator of the family child care home shall obtain approval of the modifications or improvements from the association before undertaking any construction.

(d) An association may authorize the use of an apartment or unit as a family child care home by obtaining the approval of a majority of the owners of the condominium project or planned community, where majority is defined in the association bylaws or other association documents, or by any other method specified in the association bylaws or other association documents. The family child care home authorized shall be subject to any conditions and limitations approved by the majority of the owners of the condominium project or planned community, or approved by any other method specified in the association bylaws or other association documents.

(e) An association may:

(1) Impose conditions on the establishment or operation of a family child care home that are necessary for association immunity from liability under section 663- , including:

(A) Requiring the family child care home to comply with the Americans With Disabilities Act;

(B) Limiting the number of apartments or units used as a family child care home to no less than one per cent, and no more than three per cent, of the total number of apartments or units in any townhouse project;

(C) Limiting family care homes that may be established to those operated by an owner-occupant; and

(D) Restricting family care homes to the fourth or lower floor; and

(2) Require the operator of the family child care home, as a condition precedent to the establishment of the family child care home, to:

(A) Indemnify, hold harmless, and defend the association against all claims, including costs and attorneys' fees, whether brought by judicial or administrative action, relating to the operation of a family child care home as well as to common elements that are traversed by persons going to and from the family child care home;

(B) Reimburse the association for the amount of any increase in the association's liability insurance premiums attributable by the insurer to the operation of the family child care home;

(C) Require the parent, guardian, and caretaker of the child being cared for in the family child care home to sign a waiver of claims for liability against the association; and

(D) Obtain liability insurance to cover the family child care home and the common elements that meets the approval of the association and that names the association as an additional named insured,

for liability claims arising solely from the operation of the child care business; provided that:

(i) Policy limits shall be determined in accordance with the declaration; and

(ii) The liability policy of the family child care home shall be the sole remedy for any injury occurring to the child subject to the care of the family child care home, and the parent, guardian, or caretaker of a child subject to the care of the family child care home.

In the event that coverage for the family child care home is excluded from the association policy and an alternative source of liability coverage for the same risk or risks is unavailable, the association may prohibit the establishment of the family child care home.

(f) Associations shall be immune from liability for the operation of the family child care home as provided under section 663- ."

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§663- Liability for operation of a family child care home.** (a) Where a family child care home is authorized and established in compliance with this section, the association shall not be liable for any claims or causes of action for any injury to a child that is subject to the care of the family child care home, or to any of the child's relatives, guardians, or caretakers, that occur within the family child care home or on the common elements of the condominium project, planned community, or townhouse project in which the family child care home is located.

(b) This section shall not apply to an association that:

(1) Allows the operation of a family child care home that is:

(A) Not operated by an owner-occupant;

(B) Above the fourth floor; or

(C) Not established in compliance with the Equal Opportunity for Individuals With Disabilities Act, (Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended);

or

(2) Allows more than three per cent of the total number of apartments subject to the association to be used as a family child care home.

(c) As used in this section:

"Apartment" has the same meaning as set forth in section -1;

"Association" has the same meaning as set forth in section -1;

"Common elements" has the same meaning as set forth in section -1;

"Condominium" has the same meaning as set forth in section -1;

"Family child care home" has the same meaning as set forth in section -1;

"Planned community" has the same meaning as set forth in section -1; and

"Townhouse" has the same meaning as set forth in section -1."

SECTION 3. Section 46-15.35, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purposes of this section, "family child care home" means a private [home where six or fewer children are cared for.] residence, including an apartment, unit, or townhouse, as those terms are defined in section -1, at which

care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time."

SECTION 4. Section 346-151, Hawaii Revised Statutes, is amended by amending the definition of "family child care home" to read as follows:

""'Family child care home" means a private [home] residence, including a home, apartment, unit, or townhouse, as those terms are defined in section -1, at which care may be provided for three to no more than six children[,] who are unrelated to the caregiver by blood, marriage, or adoption, at any given time."

SECTION 5. Section 501-231, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) This provision shall not apply to:
(1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
(2) Limited-equity housing cooperatives created pursuant to chapter 421H; or
(3) Cooperative housing corporations created pursuant to chapter 421I[;
(4) Condominium property regimes created pursuant to Chapter 514A; or
(5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association].

(c) For the purposes of this section "family child care home" means a private [home where six or fewer children are cared for.] residence, including an apartment, unit, or townhouse, as those terms are defined in section -1, at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time."

SECTION 6. Section 502-111, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) This provision shall not apply to:
(1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
(2) Limited-equity housing cooperatives created pursuant to chapter 421H; or
(3) Cooperative housing corporations created pursuant to chapter 421I[;
(4) Condominium property regimes created pursuant to chapter 514A; or
(5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association].

(c) For the purposes of the section, "family child care home" means a private [home where six or fewer children are cared for.] residence, including an apartment, unit, or townhouse, as defined in section -1, at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval; provided that:
(1) Sections 1 and 2 shall apply to child care businesses, family child care homes, condominium projects, planned communities, and townhouses that are in existence as of the effective date of this Act; and
(2) This Act shall be repealed on June 30, 2001; provided that sections 46-15.35, 346-151, 501-231 and 502-111, Hawaii Revised Statutes, shall be reenacted in the same form in which they existed on the day before the approval of this Act.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 243

S.B. NO. 1079

A Bill for an Act Relating to Permit Processing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to change the name of the consolidated application process to facilitated application process. The legislature recognizes that the present "consolidated application process" is often mistaken as a single permit application for all required state permits. Changing the name to "facilitated application process" will more accurately describe what the process does, namely, assists applicants in obtaining state and county permits, facilitates the application for and tracking of such permits, and makes the complicated permit application and approval process more efficient and predictable. The Act also amends the permit process task force enabling legislation to reflect needed changes in membership and sunset provisions.

SECTION 2. Section 201-62, Hawaii Revised Statutes, is amended:
(1) By amending the title to read as follows:

"§201-62 [Consolidated] Facilitated application process."

(2) By amending subsections (a) to (d) to read as follows:

"(a) State agencies are required, and county agencies are authorized and encouraged, to participate in the [consolidated] facilitated application process set forth herein.

(b) The department shall serve as [a] the lead agency for the [consolidated] facilitated application procedure and shall be the lead agency to administer [and facilitate] the [consolidated] facilitated application procedure for any project that requires both county permit applications and state agency approval.

(c) The procedure shall be as follows:
(1) An applicant for two or more state permits may apply in writing to the department requesting a [consolidated] facilitated application process for the consideration of the application. The written request shall include sufficient data about the proposed project for the department to determine which other agencies or authorities may have jurisdiction;
(2) Upon receiving a written request for the [consolidated] facilitated application process, the department shall notify all federal, state, and

county agencies or authorities [which] that the department determines may have jurisdiction over part or all of the proposed project, and require those state agencies or authorities and invite those county and federal agencies or authorities to participate in the [consolidated] facilitated application process;

(3) The applicant and each agency or authority required or agreeing to participate in the [consolidated] facilitated application process shall designate a representative to serve on the [consolidated] facilitated application review team;

(4) Any state agency or authority designated by the department as a party to an application review that is not able to participate, shall submit an explanation, in writing, to the department as to the reasons and circumstances for noncompliance;

(5) The representatives of the agencies, authorities, and the applicant may develop and sign a joint agreement among themselves identifying the members of the [consolidated] facilitated application review team, specifying the regulatory and review responsibilities of each government agency and setting forth the responsibilities of the applicant, and establishing a timetable for regulatory review, the conduct of necessary hearings, preparation of an environmental impact statement if necessary, and other actions required to minimize duplication and coordinate the activities of the applicant, agencies, and authorities;

(6) Each agency or authority shall issue its own permit or approval based upon its own jurisdiction. The [consolidated] facilitated application process shall not affect or invalidate the jurisdiction or authority of any agency under existing law; and

(7) The applicant shall apply directly to each federal or county agency that does not participate in the [consolidated] facilitated application process.

(d) If a state regulatory permit is necessary to obtain a county permit, then a county agreeing to participate in the [consolidated] facilitated application process may advise the applicant of the [consolidated] facilitated application procedure. To apply for the [consolidated] facilitated application procedure, applicants for county permits involving state permit approvals shall submit a form, which shall be issued by the department; provided that this procedure shall apply only to state permits that need to be approved by a state agency following a review of the plans and certifications submitted by the applicant. State permits that are approved by rule require only that the licensed design professional certify that the plans and specifications are in compliance with state rules. No review by a state agency is required for state approval. Plans and specifications requiring state agency review shall be submitted with the [consolidated] facilitated application procedure to the appropriate state agency, with a copy to the department. If a state permit is approved by rule, then the participating county shall provide a set of drawings and specifications submitted by the applicant to the state agency that developed the rules.

In developing the procedures for approval by rule and by review, permit requirements shall be clearly stated. Performance standards, rather than specific technologies or procedures, shall be specified when appropriate."

SECTION 3. Section 201-62.5, Hawaii Revised Statutes, is amended to read as follows:

"**§201-62.5[1] Permit process task force.** (a) To assist the department of business, economic development, and tourism in the [consolidated] facilitated application process, there is established a permit process task force within the department

for administrative purposes to streamline and facilitate the state permit approval process[.] for county building permit applications requiring state agency approval.

(b) The task force shall consist of [eleven] sixteen members[, who shall be appointed by the governor. The task force shall consist of:] as follows:

(1) The comptroller or the comptroller's designated representative;

(2) The director of business, economic development, and tourism or the director's designated representative;

(3) The director of health or the director's designated representative;

(4) The director of labor and industrial relations or the director's designated representative;

(5) The chairperson of the board of land and natural resources or the chairperson's designated representative;

(6) The director of transportation or the director's designated representative;

(7) [Representatives] One representative of construction labor unions[;] appointed by the governor;

(8) [Representatives] Three representatives consisting of developers, licensed building contractors, and members of the American Institute of Architects Hawaii State Council and the Consulting Engineers Council of Hawaii[; and] appointed by the governor;

(9) [A representative] Two representatives from the public at large[.] appointed by the governor; and

(10) One representative from each of the four counties appointed by the mayor of each county.

Each member of the task force shall serve [for a two-year term.] until June 30, 2002. The members of the task force shall serve without compensation, but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties. Any vacancy on the task force shall be filled in the same manner in which the original position was filled.

(c) The task force, in conjunction with each affected state agency, shall:

(1) Examine the [consolidated] facilitated application process and review all state agency rules pertaining to the state permit approval process for[2] county building permit applications to determine the source of inefficiencies, delays, and duplications, and the status of permits in progress;

(2) Identify all permits and approvals that the State currently requires from applicants seeking approvals for projects that require county permit applications;

(3) Recommend to the governor which permits presently approved by review shall be approved by rule [and which permits shall be approved by review], including the justification for approving [each permit] the permits by rule [or by review]; and

[(4) Adopt a plan and make recommendations to enable all applicants seeking state agency approval for permits, to undergo the permit by rule procedure, rather than the permit by review procedure; and

(5)] (4) Provide recommendations to expedite and facilitate the permit approval process within each state agency for applicants seeking state permit approvals to start construction.

(d) For purposes of this section:

"Permit by review" means permits approved by the appropriate state departments.

"Permit by rule" means permits approved by administrative rule.

(e) This section shall be repealed on June 30, 2002."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. So in original.
2. Should be underscored.

ACT 244

S.B. NO. 1118

A Bill for an Act Relating to Habitual Criminal Behavior.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is amended to read as follows:

"**§706-606.5 Sentencing of repeat offenders.** (1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 708-875 relating to trademark counterfeiting; [710-1031 relating to intimidation of a correctional worker;] 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

(a) One prior felony conviction:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
(ii) Where the instant conviction is for a class A felony—six years, eight months;
(iii) Where the instant conviction is for a class B felony—three years, four months;
(iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;

(b) Two prior felony convictions:
(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
(ii) Where the instant conviction is for a class A felony—thirteen years, four months;
(iii) Where the instant conviction is for a class B felony—six years, eight months;
(iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;

(c) Three or more prior felony convictions:
(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
(ii) Where the instant conviction is for a class A felony—twenty years;
(iii) Where the instant conviction is for a class B felony—ten years;
(iv) Where the instant conviction is for a class C felony offense enumerated above—five years.

(2) Except as in subsection (3), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

(a) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the first degree or attempted murder in the first degree;
(b) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the second degree or attempted murder in the second degree;
(c) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;
(d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;
(e) Within five years after a prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above;
(f) Within the maximum term of imprisonment possible after a prior felony conviction of another jurisdiction.

(3) If a person was sentenced for a prior felony conviction to a special term under section 706-667, then the person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

(a) Within eight years after a prior felony conviction where the prior felony conviction was for a class A felony;
(b) Within five years after the prior felony conviction where the prior felony conviction was for a class B felony;
(c) Within four years after the prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above.

(4) Notwithstanding any other law to the contrary, any person convicted of any of the following misdemeanor offenses:

(a) Section 707-712 relating to assault in the third degree;
(b) Section 707-717 relating to terroristic threatening in the second degree;
(c) Section 707-733 relating to sexual assault in the fourth degree;
(d) Section 708-822 relating to criminal property damage in the third degree;
(e) Section 708-832 relating to theft in the third degree; and
(f) Section 708-833.5(2) relating to misdemeanor shoplifting,

and who has been convicted of any of the offenses enumerated above on at least three prior and separate occasions within three years of the date of the commission of the present offense, shall be sentenced to no less than nine months of imprisonment. Whenever a court sentences a defendant under this subsection for an offense under section 707-733, the court shall order the defendant to participate in a sex offender assessment and, if recommended based on the assessment, participate in the sex offender treatment program established by chapter 353E.

[(4)] (5) The sentencing court may impose the above sentences consecutive to any sentence imposed on the defendant for a prior conviction, but such sentence shall be imposed concurrent to the sentence imposed for the instant conviction. The court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant such action. Strong mitigating circumstances shall include, but shall not be limited to the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

[(5)] (6) A person who is imprisoned in a correctional institution pursuant to subsection (1) shall not be paroled prior to the expiration of the mandatory minimum term of imprisonment imposed pursuant to subsection (1).

[(6)] (7) For purposes of this section:

(a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;
(b) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in excess of one year; and
(c) A conviction occurs on the date judgment is entered."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 245

S.B. NO. 1125

A Bill for an Act Relating to the Code of Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 412:1-109, Hawaii Revised Statutes, is amended by amending the definition of "Hawaii financial institution" to read as follows:

""Hawaii financial institution" means [a]:

(1) A corporation or credit union which holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company[,]; or

(2) A resulting bank as defined in article 12,

and includes a corporation, mutual savings and loan association, or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on July 1, 1993. A Hawaii financial institution may be a bank, resulting bank as defined in article 12, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank."

SECTION 2. Section 412:2-503, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) If the failing financial institution is a bank, savings bank, or depository financial services loan company that is a Hawaii financial institution, or if the institution to result from the acquisition proposed in the application is to be any of the foregoing, the commissioner may accept an application under this part only from:

(1) A Hawaii financial institution;

(2) A federal financial institution whose operations are principally conducted in this State (unless the operations of any holding company of such an applicant are principally conducted elsewhere than in Hawaii [or a qualifying state]);

[(3) A financial institution whose operations are principally conducted in a qualifying state (unless the operations of any holding company of such an applicant are principally conducted elsewhere than in Hawaii or a qualifying state);]

(3) A resulting bank as defined in article 12;

(4) An out-of-state bank as defined in article 12;

[(4)] (5) The holding company of any of the foregoing, if any [(unless the operations of such holding company or any holding company of such holding company are principally conducted elsewhere than in Hawaii or a qualifying state)]; and

[(5)] (6) A person that is not a company[; and

(6) Notwithstanding any other limitations in this section, a bank holding company as defined under the Bank Holding Company Act of 1956, as amended, that is adequately capitalized and adequately managed].

(b) No application shall be accepted which provides for a merger or consolidation of a failing financial institution or a purchase of its assets or assumption of its liabilities, or a purchase of its capital stock if, as a result of such merger, consolidation, purchase or assumption, any person would be eligible to receive deposits in this State other than through a Hawaii financial institution [or], a federal financial

institution whose operations are principally conducted in this State[.], or a resulting bank as defined in article 12."

SECTION 3. Section 412:2-507, Hawaii Revised Statutes, is amended to read as follows:

"**§412:2-507 Expedited approvals.** If the commissioner finds that immediate action is necessary in order to prevent the probable failure of the Hawaii financial institution, as determined by section 412:2-501, the commissioner shall have the power to issue an expedited approval authorizing the following:

(1) In the case of a Hawaii financial institution seeking to acquire the failing financial institution, expedited approval for the establishment of a branch;

(2) In the case of a new corporation[,] or for a qualified bidder [from a qualifying state], a charter for a bank or savings bank or a license to engage in the business of a depository financial services loan company; provided that the applicant has secured provisional approval to organize as required in section 412:2-508."

SECTION 4. Section 412:3-112, Hawaii Revised Statutes, is amended by amending subsection (a)[1] to read as follows:

"**§412:3-112 Submissions to commissioner.** (a) Every Hawaii financial institution, at its own expense, shall file the following written reports with the commissioner:

(1) An independent audit report of its financial statements as of the close of its fiscal year shall be filed by a Hawaii financial institution, other than a nondepository financial services loan company or credit union, within one hundred twenty days of the close of its fiscal year; provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days. For depository institutions, the independent audit report specified in this paragraph shall comply with the requirements for annual reports under section 36 of the Federal Deposit Insurance Act (12 U.S.C. §1831m), as amended; provided that for a depository institution which, in any fiscal year, is a small depository institution within the meaning of section 36(j) of the Federal Deposit Insurance Act, or any implementing regulations thereunder, the independent audit report specified in this paragraph shall comply with the requirements for annual independent audits of financial statements under section 36(d). For trust companies, the independent audit report shall contain audited financial statements prepared in accordance with generally accepted accounting principles and shall be based on an audit performed in accordance with generally accepted auditing standards, the independent auditor's report on the fair presentation of the financial statements and any qualification to the report, any management letter, and any other report. Hawaii financial institutions that are subsidiaries of a financial institution holding company may satisfy the requirements of this paragraph by filing an independent audit report of the financial institution holding company;

(2) Unaudited financial statements as of the following dates shall be filed by a Hawaii financial institution within thirty days of the date of the financial statement as follows:

(A) For a [nondepository financial services loan company,] trust company[,] or credit union, the statements shall be filed as of June 30 and December 31 of each year; [and]

(B) For a Hawaii financial institution, other than a nondepository financial services loan company, trust company, or credit union, the statements shall be filed as of March 31, June 30, September 30, and December 31 of each year; and

(C) For a nondepository financial services loan company, the statement shall be filed as of the last day of the sixth month and the last day of the twelfth month of each fiscal or calendar year;

provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days.

The reports shall be in a form prescribed by the commissioner and prepared in accordance with section 412:3-108. In the alternative, the institution may file the Call Reports, Consolidated Reports of Condition and Reports of Income, or Thrift Financial Reports as of those dates which are submitted to the appropriate federal regulatory agency of the institution;

(3) A notice of any change in the office of the person who has primary responsibility for the operation and management of the financial institution shall be filed by a Hawaii financial institution within ten days of the change. The notice shall specify the name and address of the person, who shall be designated that institution's "chief executive officer"; and

(4) Any other reports and other information that the commissioner may require with respect to any financial institution at the times and in the form as the commissioner deems appropriate for the proper supervision and regulation of the institution.

Each report shall be signed by an officer authorized by the institution's board of directors to sign the report, and shall contain a declaration of the officer's authority and a statement that the report is true and correct."

SECTION 5. Section 412:3-617, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Subject to the approval of the commissioner, a solvent credit union whose capital is not impaired and which has not received a notice of charges and proposed order of suspension or revocation pursuant to section 412:2-312 may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section[.]:

(1) The board of directors shall adopt a resolution adopting a plan of liquidation and dissolution, recommending the voluntary dissolution of the credit union, and directing that the question of the dissolution be submitted to the commissioner for approval and, if approved, requesting that the liquidation question be submitted to the members[;]. The plan of liquidation and dissolution shall include but not be limited to provisions for the orderly payment or assumption of the credit union's deposits, shares, and other liabilities;

(2) Not later than ten days after [the board of directors decides to submit the liquidation question to the members, the chairperson shall notify the commissioner and] the meeting of the board of directors described in paragraph (1), the credit union shall file an application with the commissioner pursuant to section 412:3-603, for approval to cease business and dissolve. The application shall be accompanied by a copy of the

plan of liquidation and dissolution, certified by two executive officers of the credit union, and duly adopted by the board, and shall include any other information that the commissioner may require. A copy of the notice shall be delivered contemporaneously to any government agency or other organization insuring member accounts thereof, in writing, setting forth the reasons for the proposed liquidation[. Not later than ten days after the members act on the liquidation question, the chairperson of the board of directors shall notify the commissioner and any government agency or other organization insuring member accounts, in writing, of the action of the members on the liquidation question];

(3) [As] The commissioner shall approve the application to cease business and dissolve if the commissioner is satisfied that the depositors, beneficiaries, and creditors will be adequately protected under the plan, the credit union is not insolvent or in danger of becoming insolvent, its capital is not impaired and is not in danger of becoming impaired, and no other reason exists to deny the application. The commissioner may impose any restrictions and conditions as the commissioner deems appropriate;

(4) Upon receipt of the commissioner's approval to cease business and dissolve and as soon as the board of directors decides to submit the liquidation question to the members, all business affairs of the credit union, including[,] but not limited to[,] payments on and [withdrawal] withdrawals of shares, share certificates, share drafts, deposits, and deposit certificates, (except for the transfer of shares or deposits to loans and interest), [making] investments of any kind, (other than short-term investments), and the issuing of loans, shall be suspended until the members act on the liquidation question. Upon approval by the members, all business transactions of the credit union shall be permanently discontinued. [Necessary] Transfer of deposits or shares to loans and interest, collection of loans and interest, and the payment of necessary expenses of operation[, however,] shall continue [to be paid] upon authorization by the board of directors or the liquidating agent during liquidation;

[(4)] (5) An affirmative majority vote by the members by ballot, in person, by letter, or other written communication, is necessary for a credit union to enter into voluntary liquidation. Whenever authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least ten days prior to such meeting;

(6) Not later than ten days after the members act on the liquidation question, the chairperson of the board of directors shall notify the commissioner and any government agency or other organization insuring member accounts, in writing, of the action of the members on the liquidation question;

[(5)] (7) A liquidating credit union shall remain in existence for the purpose of discharging its debts, collecting its loans, distributing its assets, and any other necessary functions in order to conclude its business. A liquidating credit union may sue or be sued for the purpose of enforcing its debts and obligations until its affairs are complete;

[(6)] (8) The board of directors or the liquidating agent who may be the insurer shall use the assets of the credit union to pay:

(A) First, the expenses incidental to liquidation including any surety bonds required during liquidation;

(B) Second, any liability due to nonmembers;

(C) Third, the deposits and deposit certificates of the members of the credit union; and

(D) Fourth, the remaining assets shall be distributed to the members in proportion to the number of shares held by each member on the date dissolution was approved by the members; [and]

[(7)] (9) When the board of directors or the liquidating agent determines that all assets of the credit union having a reasonable expectancy of realization have been liquidated and distributed as provided in this section, the board or the liquidating agent, whichever is applicable, shall complete a certificate of dissolution on a form prescribed by the commissioner. Upon the completion of such certificate, the board or the liquidating agent, whichever is applicable, shall file such certificate with the commissioner for the complete dissolution and liquidation of the credit union[.]; and

(10) Any credit union whose capital is impaired or in danger of becoming impaired, and any credit union that is insolvent or in danger of becoming insolvent, may not undergo a voluntary dissolution."

SECTION 6. Section 412:13-222, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§412:13-222[]] Relocation of office; written [notice] application necessary.** (a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall relocate any Hawaii office unless the foreign bank [provides prior] files a written [notice to] application with [[]the[]] commissioner and the commissioner [has approved] approves the relocation.

(b) [Written notice provided] The written application filed by a foreign bank under this section shall be in a form and contain any information as the commissioner shall require and shall be accompanied by a fee, the amount of which shall be established by rule."

SECTION 7. Section 412:2-500, Hawaii Revised Statutes, is amended by repealing the definition of "qualifying state".

["'"Qualifying state" means a state, other than Hawaii, in the Twelfth Federal Reserve District as designated in 12 United States Code section 222."]

SECTION 8. Section 412:2-512, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed.[2] New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 246 S.B. NO. 1128

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:2-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be a chief deputy commissioner, who shall be subject to chapters 76 and 77. The chief deputy commissioner shall have the[1] power to perform any act or duty [conferred upon] assigned by the commissioner, and shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the certificate of the chief deputy commissioner's appointment and filed in the office of the lieutenant governor."

SECTION 2. Section 431:2-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) (1) A person who intentionally or knowingly violates, intentionally or knowingly permits any person, over whom the person has authority, to violate, or intentionally or knowingly aids any person in violating any insurance rule or statute of this State or any effective order issued by the commissioner, shall be subject to any penalty or fine as stated in this code or the penal code of the Hawaii Revised Statutes.

(2) If the commissioner has cause to believe that any[2] of other [laws] law relating to insurance, the commissioner shall certify the facts of the violation to the public prosecutor of the jurisdiction [of] in which the offense was committed.

(3) Violation of any provision of this code is punishable by a fine of not less than [$10] $100 nor more than [$1,000,] $10,000 per violation, or by imprisonment for not more than one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law.

(4) The terms [intentionally] "intentionally" and [knowingly] "knowingly" have the meanings given in [sections] section 702-206(1) and [702-206(2).] (2)."

SECTION 3. Section 432:1-101.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432:1-101.5[]] Disclosure of health care coverage and benefits.** In order to ensure that all individuals understand their health care options and are able to make informed decisions, all mutual benefit societies shall provide current and prospective members with written disclosure of coverages and benefits, including information on coverage principles and any exclusions or restrictions on coverage.

The information provided shall be current, understandable, and available prior to membership, and upon request after membership. A policy provided to a member which describes coverages and benefits shall be in conformance with part I of article 10 of chapter 431."

SECTION 4. Section 432:2-609, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Agents of societies shall be licensed in accordance with article 9 of the insurance code; provided that no examination shall be required of any individual

licensed to represent a fraternal benefit society prior to July 1, 1988.] Fraternal benefit society agents shall be licensed in accordance with the provisions governing solicitors in article 9 of chapter 431, except that the appointment shall be made by the fraternal benefit society. Fraternal benefit society agents are not prohibited from obtaining additional licenses provided for in article 9. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988."

SECTION 5. Section 432D-25, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432D-25[]] Disclosure of health care coverage and benefits.** In order to ensure that all individuals understand their health care options and are able to make informed decisions, all health maintenance organizations shall provide current and prospective enrollees with written disclosure of coverages and benefits, including information on coverage principles and any exclusions or restrictions on coverage.

The information provided shall be current, understandable, and available prior to enrollment, and upon request after enrollment. A policy or contract provided to an enrollee which describes coverages and benefits shall be in conformance with part I of article 10 of chapter 431."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval, except that sections 3 and 5 of this Act shall take effect on January 1, 2000.

(Approved July 2, 1999.)

Notes

1. "The" should be underscored.
2. Prior to amendment "person has violated any penal provision of this code or" appeared here.

ACT 247 S.B. NO. 1130

A Bill for an Act Relating to Health Maintenance Organizations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 432D-5, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"**[[]§432D-5[]] Annual [report.] and quarterly reports.** (a) Every health maintenance organization shall annually, on or before March 1, file a report verified by at least two principal officers with the commissioner covering the preceding calendar year. Each health maintenance organization shall file quarterly, on or before the forty-fifth day after each quarter, a copy of its quarterly report verified by at least two principal officers with the commissioner. [Such report] These reports shall comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe on which forms the reports are to be filed. In addition, the health maintenance organization annually shall file with the commissioner the following by the dates specified:

(1) An audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of operations of the health maintenance organization on or before June 1, or such later date as the commissioner upon request or for cause may specify. The health maintenance organization, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the health maintenance organization's designation within fifteen days of receipt of the health maintenance organization's notice, and the health maintenance organization shall be required to designate another independent certified public accountant or accounting firm[.];

(2) A list of the providers who have executed a contract that complies with section 432D-8(d) on or before March 1; and

(3) A description of the grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before March 1."

SECTION 2. Section 432D-17, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432D-17[]] Fees.** (a) The commissioner shall collect in advance the following fees:

(1) For filing an application for a certificate of authority or amendment thereto, $600; and

(2) For all services subsequent to the issuance of a certificate of authority (including extension of the certificate of authority), $400.

(b) The commissioner shall notify the holder of the certificate of authority by written notice at least thirty days prior to the extension date of the certificate. If the fee is not paid before or on the extension date, a penalty shall be imposed in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within thirty days immediately following the extension date, the commissioner may revoke the certificate of authority and shall not reinstate the certificate of authority until the fee and penalty have been paid.

[(b)] (c) All fees and penalties collected pursuant to this section and penalties collected pursuant to section 432D-14 shall be remitted by the commissioner to the director of finance and shall be placed to the credit of the general fund."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 248 S.B. NO. 1136

A Bill for an Act Relating to Regulation of Osteopathy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§460- Rules.** The board of medical examiners, established pursuant to chapter 453, shall adopt rules in accordance with chapter 91 for the administration of this chapter."

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board of acupuncture, board of public accountancy, board of barbering and cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners in optometry, [board of osteopathic examiners,] pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes."

SECTION 3. Section 453-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For the purpose of carrying out this chapter, the governor shall appoint a board of medical examiners, whose duty it shall be to examine all applicants for license to practice medicine or surgery. As used in this chapter, "board" means the board of medical examiners.

The board shall consist of [nine] eleven persons, seven of whom shall be physicians or surgeons licensed under the laws of the State, two of whom shall be osteopathic physicians licensed under the laws of the State, and two of whom shall be lay members appointed from the public at large. Of the [seven physician or surgeon members, four] nine members who are physicians, surgeons, or osteopathic physicians, at least five shall be appointed from the city and county of Honolulu and [one each] at least one shall be appointed from each of the other counties. Medical societies in the various counties may conduct elections periodically but no less frequently than every two years to determine nominees for the board to be submitted to the governor. In making appointments, the governor may consider recommendations submitted by the medical societies and the public at large. Each member shall serve until a successor is appointed and qualified."

SECTION 4. Section 460-1, Hawaii Revised Statutes, is amended to read as follows:

"**§460-1 License to practice.** No person shall practice as an osteopathic physician [and surgeon] either gratuitously or for pay, or shall offer to so practice, or shall advertise or announce, either publicly or privately, that the person is prepared or qualified to so practice, or shall append the letters "Dr." or the letters "D.O." to the person's name, with the intent thereby to imply that the person is a practitioner as an osteopathic physician [and surgeon], without having a valid unrevoked license, obtained from the board of [osteopathic] medical examiners, in form and manner substantially as hereinafter set forth.

Nothing herein shall:

(1) Apply to any osteopathic physician [and surgeon] from another state who is in actual consultation with a licensed physician of this State if the physician from another state is licensed to practice in the state in which the physician resides; provided that the physician from another state shall not open an office, or administer treatment to any patient except in actual temporary consultation with a resident licensed physician of this State; or

(2) Prohibit services rendered by any osteopathic physician's assistant when the services are rendered under the supervision, direction, and control of an osteopathic physician [and surgeon] licensed in this State, as may be specified by rule or statute. The board of [osteopathic] medical examiners shall adopt rules to define the type of supervision, direction, and control that must be maintained and the extent that the personal presence of the osteopathic physician [and surgeon] will be required. Any osteopathic physician [and surgeon] who employs or directs an osteopathic physician's assistant shall retain full professional and personal responsibility for any act which constitutes the practice of osteopathic medicine and surgery when performed by an osteopathic physician's assistant."

SECTION 5. Section 460-3, Hawaii Revised Statutes, is amended to read as follows:

"**§460-3 [Board of osteopathic examiners.] License required for osteopathic physicians.** No person shall be licensed by the board of [osteopathic] medical examiners to practice as an osteopathic physician [and surgeon] unless the applicant has been duly examined and found to be possessed of the necessary qualifications, or found to be otherwise qualified as herein provided.

As used in this chapter, "board" means the board of medical examiners."

SECTION 6. Section 460-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In any proceedings before the board [of osteopathic examiners] for the revocation or suspension of a license under this chapter, upon any of the grounds listed in section 460-12, the person whose license is sought to be revoked or suspended shall be given, pursuant to chapter 91, reasonable written notice of the charge or charges upon which the proceeding is based and of the time and place where a hearing will be held and shall be given reasonable opportunity to be heard and present evidence in the person's defense.

In the proceeding, the board may subpoena, administer oaths to, and examine witnesses on any relevant matter in the proceeding. The person whose license is sought in the proceeding to be revoked or suspended shall be entitled to require the board or any member thereof to subpoena and to administer oaths to any witness or witnesses who may be able to present evidence relevant in the proceeding, and shall

be entitled to examine the witness and any other witness in the proceeding. The circuit court of the circuit in which the proceeding is held shall have power to enforce by proper proceeding the attendance and testimony of witnesses in the proceeding."

SECTION 7. Section 460-17, Hawaii Revised Statutes, is amended to read as follows:

"**§460-17 Records.** The board [of osteopathic examiners] shall keep a record which shall be open to public inspection at all reasonable times, of [its] proceedings relating to the issuance, refusal, renewal, suspension, and revocation of licenses to practice osteopathy [and surgery]. This record shall also contain the name, known place of business and residence, and the date and number of the license of every registered osteopathic physician [and surgeon]."

SECTION 8. Section 460-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of commerce and consumer affairs shall review each complaint and information received under sections 92-17, 329-44, 460-18, 663-1.7, 671-5, and 671-15. The department shall investigate the complaint or information if it appears that the osteopathic physician [and surgeon] who is the subject of the complaint or information has violated this chapter. If the department determines that the osteopathic physician [and surgeon] has violated this chapter, the department shall present the results of its investigation to the board [of osteopathic examiners] for appropriate disciplinary proceedings."

SECTION 9. Section 460-4, Hawaii Revised Statutes, is repealed.

SECTION 10. The term of any member of the board of osteopathic examiners who was appointed before the effective date of this Act shall terminate on the effective date of this Act.

SECTION 11. All rules, guidelines, and other material adopted or developed by the board of osteopathic examiners shall remain in full force and effect until amended or repealed by the board of medical examiners. In the interim, every reference to the board of osteopathic examiners in those rules, guidelines, and other material is amended to refer to the board of medical examiners.

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 14. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 249 S.B. NO. 1140

A Bill for an Act Relating to Business Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 415, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"**§415- Registered office and registered agent.** (a) Except as provided in this section, each corporation shall continuously maintain in the State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be:

(A) An individual who resides in the State and whose business office is identical to the registered office;

(B) A domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or

(C) A foreign corporation or not-for-profit foreign corporation authorized to transact business in the State whose business office is identical to the registered office.

(b) The requirement that a corporation maintain a registered office and a registered agent shall not apply to any corporation during the time the corporation has at least one officer or director who is a resident of the State.

§415- Change of registered office or registered agent. (a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment. This consent may be indicated on or attached to the statement of change; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical.

(b) If the street address of the registered agent's business office changes, the registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change, and delivering to the director for filing a statement that complies with the requirements of subsection (a), states that the corporation has been notified of the change, and is signed by the registered agent.

§415- Resignation of registered agent. (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director for filing a statement of resignation. The statement may state that the registered office is also discontinued.

(b) The registered agent shall mail one copy of the statement of resignation to the corporation's registered office, if not discontinued, and another copy to the corporation at its principal office.

(c) The agency appointment shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed."

SECTION 2. Chapter 415B, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

"**§415B- Registered office and registered agent.** (a) Except as provided in this section, each corporation shall continuously maintain in the State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be:

(A) An individual who resides in the State and whose business office is identical to the registered office;

(B) A domestic corporation or domestic profit corporation whose business office is identical to the registered office; or

(C) A foreign corporation or foreign profit corporation authorized to transact business in the State whose business office is identical to the registered office.

(b) The requirement that a corporation maintain a registered office and a registered agent shall not apply to any corporation during the time the corporation has at least one officer or director who is a resident of the State.

§415B- Change of registered office or registered agent. (a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment. This consent may be indicated on or attached to the statement of change; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical.

(b) If the street address of the registered agent's business office changes, the registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change, and delivering to the director for filing a statement that complies with the requirements of subsection (a), states that the corporation has been notified of the change, and is signed by the registered agent.

§415B- Resignation of registered agent. (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director for filing a statement of resignation. The statement may state that the registered office is also discontinued.

(b) The registered agent shall mail one copy of the statement of resignation to the corporation's registered office, if not discontinued, and another copy to the corporation at its principal office.

(c) The agency appointment shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed.

§415B- Amended and restated articles of incorporation. (a) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements under sections 415B-37 and 415B-40.

(b) Upon their adoption, the amended and restated articles of incorporation shall set forth:

(1) All of the operative provisions of the articles of incorporation as theretofore amended;
(2) The information required under section 415B-38; and
(3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(c) The amended and restated articles of incorporation shall be delivered to the director for filing. The director may certify the amended and restated articles of incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (b)(2) and (3).''

SECTION 3. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

''**§415-8 Corporate name.** The corporate name:

(1) Shall contain the word ''corporation'', ''incorporated'', or ''limited'', or shall contain an abbreviation of one of the words; and
(2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, domestic partnership, [or] domestic limited liability company, or domestic limited liability partnership existing under the laws [[]of[]] this State, or any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall not apply if the applicant files with the director either of the following:
    (A) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name[,]; or
    (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.''

SECTION 4. Section 415-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

''(a) All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the

powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. [At least one member of every board of directors shall be a resident of this State. If there is no such director who is a member of the board, the board may not function except to elect a new director who is a resident of this State.] Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation."

SECTION 5. Section 415-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation shall be delivered to and filed by the director and shall set forth:

(1) The name of the corporation;

(2) The aggregate number of shares which the corporation shall have authority to issue, and, if the shares are to be divided into classes, the number of shares of each class;

(3) The mailing address of its initial or principal office[;] and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation's initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available[,] for the corporation's initial or principal office or for the corporation's registered office, the rural route post office number or post office box designated or made available by the United States Postal Service;

(4) The number of directors constituting the initial board of directors and the names and residence addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service; and

(5) The name, title, and residence address of each officer; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service."

SECTION 6. Section 415-58, Hawaii Revised Statutes, is amended to read as follows:

"**§415-58 Right to amend articles of incorporation.** (a) A corporation may amend its articles of incorporation from time to time, in any and in as many respects as may be desired, so long as its articles of incorporation as amended contain only those provisions which may be lawfully contained in original articles of incorporation at the time of making the amendment[,] and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, the provisions as may be necessary to effect the change, exchange, reclassification, or cancellation.

(b) In particular, and without limitation upon this general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(1) To change its corporate name;

(2) To change its period of duration;
(3) To change, enlarge, or diminish its corporate purposes;
(4) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue, except that if the aggregate number of authorized shares is decreased by the corporation's acquisition of its own shares, the decrease shall be as provided in section 415-6;
(5) To provide, change, or eliminate any provision with respect to the par value of any shares or class of shares;
(6) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;
(7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;
(8) To change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;
(9) To create new classes or shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;
(10) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;
(11) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of the series and the variations in the relative rights and preferences as between the shares of the series;
(12) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;
(13) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;
(14) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established; or
(15) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized."

SECTION 7. Section 415-61, Hawaii Revised Statutes, is amended to read as follows:

"**§415-61 Articles of amendment.** The articles of amendment shall be delivered to and filed by the director and shall set forth:
(1) The name of the corporation;
(2) The amendments so adopted which shall be identified by the numerical or other designation thereof in the articles of incorporation;

(3) The date of the adoption of the amendment by the shareholders, or by the board of directors without shareholder action;
(4) The number of shares outstanding, the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote;
(5) The number of shares voted for and against the amendment respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the amendment, respectively, or, if no vote of shareholders was taken, a statement to that effect and that shareholder action was not required; and
(6) If the amendment provides for an exchange, reclassification, or cancellation of issued shares, [and if the manner in which the same shall be effected is not set forth in the amendment, then] a statement [of the manner in which the same shall be effected.] that provisions necessary to effect the exchange, reclassification, or cancellation have been made."

SECTION 8. Section 415-74, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon receiving the approvals required by sections 415-71, 415-72, 415-72A, and 415-73, articles of merger or articles of consolidation shall be delivered to the director for filing and shall set forth:
(1) [The] A statement that the plan of merger, or the plan of consolidation[;] has been approved by the board of directors of each corporation involved in the merger or consolidation;
(2) Either:
  (A) [a] A statement that the vote of shareholders is not required by virtue of section 415-73(e)[,]; or
  (B) [as] As to each corporation, the approval of whose shareholders is required, the number of shares outstanding[,] and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each class; [and]
(3) As to each corporation the approval of whose shareholders is required, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan, respectively[.]; and
(4) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation."

SECTION 9. Section 415-75, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Articles of merger shall be delivered to the director for filing and shall set forth:
(1) [The] A statement that the plan of merger[;] has been approved by the board of directors of the surviving corporation;
(2) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; and
(3) The date a copy of the [mailing] plan of merger is mailed to shareholders of the subsidiary corporation entitled to receive the plan [of a copy of the plan of merger]."

SECTION 10. Section 415-75.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Articles of merger shall be delivered to the director for filing and shall set forth:

(1) [The] A statement that the plan of merger[;] has been approved by the board of directors of the parent corporation;
(2) The number of outstanding shares of each class of any nonsurviving subsidiary corporation and the number of such shares of each class owned by the parent corporation; and
(3) The date a copy of the [mailing] plan of merger is mailed to shareholders of any nonsurviving subsidiary corporation entitled to receive the plan [of a copy of the plan of merger]."

SECTION 11. Section 415-95, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Within [ninety days] two years after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the [ninety-day] applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter."

SECTION 12. Section 415-108, Hawaii Revised Statutes, is amended to read as follows:

"**§415-108 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

(1) Is not the same as, or substantially identical to, the name of any domestic corporation, domestic partnership, [or] domestic limited liability company, or domestic limited liability partnership existing under the laws of this State or any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
    (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name;
    (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; or

(C) A copy of a certificate of registration of a trade name by the foreign corporation under which trade name that foreign corporation will transact business in this State; and

(2) Is transliterated into letters of the English alphabet, if the name is not in English."

SECTION 13. Section 415-125, Hawaii Revised Statutes, is amended to read as follows:

"**§415-125 Annual report of domestic and foreign corporations.** Each domestic corporation and each foreign corporation authorized to transact business in this State shall deliver to the director, within the time prescribed by this chapter, an annual report signed by any authorized officer, or an attorney-in-fact for an officer, or if the corporation is in the hands of a receiver or trustee, by the receiver or trustee setting forth:

(1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;

(2) [The] Where the corporation is required by law to have a registered office and registered agent in the State, the street address of the domestic corporation's or foreign corporation's registered office in this State, and the name of its registered agent in this State at such address, and the address of its principal office in the state or country under the laws of which it is incorporated[, and, in the case of a domestic corporation, the address of its principal office]; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;

(3) A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this State;

(4) The names and respective residence addresses of the directors and officers of the corporation and the names and respective addresses of the directors and officers of the foreign corporation; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;

(5) A statement of the aggregate number of shares which a domestic corporation has authority to issue, itemized by classes and series, if any, within a class; and

(6) A statement of the aggregate number of shares issued by a domestic corporation, itemized by classes and series, if any, within each class."

SECTION 14. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

"**§415A-8 Corporate name.** The name of a professional corporation:

(1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the licensing authority of the profession;

(2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, [or] limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, [or] limited liability company, or limited liability partnership authorized to transact busi-

ness[,] in the State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Hawaii Business Corporation Act, chapter 415, or the name of a corporation which has registered its corporate name as provided in the Hawaii Business Corporation Act, chapter 415; except that this section shall not apply if the applicant files with the director either of the following:

(A) The written consent of such other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name[,]; or

(B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the name in this State."

SECTION 15. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Within [ninety days] two years after the involuntary dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the [ninety-day] applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved professional corporation pursuant to the amendment provisions of this chapter."

SECTION 16. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-7 Corporate name.** The corporate name shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, limited liability partnership, or trade name existing or registered under the laws of this State, or any foreign corporation, partnership, [or] limited liability company, or limited liability partnership authorized to transact business[,] in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time reserved in the manner provided under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of this State, except that this provision shall not apply if the applicant delivers to the director for filing either of the following:

(1) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name[,]; or

(2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 17. Section 415B-11, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-11 Annual report of domestic and foreign corporations.** (a) Each domestic corporation or foreign corporation authorized to conduct affairs in this State shall deliver to the director for filing, within the time prescribed by this chapter, an annual report setting forth:

(1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;

(2) [The] Where the corporation is required by law to have a registered office and registered agent in the State, the street address of the domestic corporation's or foreign corporation's registered office in this State, the name of [the foreign corporation's] its registered agent in this State at [that] such address, and the mailing address of its principal office in the state or country under the laws of which it is incorporated[, and in the case of domestic corporation, the address of the corporation's principal office and the mailing address of the principal office if it differs]; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State; and

(4) The names and respective addresses of the directors and officers of the foreign corporation[,] and, in the case of a domestic corporation, the names and residence addresses of the directors and officers of a domestic corporation.

(b) The annual report shall be made on forms prescribed and furnished by the director. It shall be executed on behalf of the corporation by any authorized officer or an attorney-in-fact for an officer of the corporation or, if the corporation is in the hands of a receiver or trustee, by the receiver or trustee."

SECTION 18. Section 415B-34, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-34 Articles of incorporation.** (a) One or more individuals may organize a corporation by signing and delivering articles of incorporation to the director pursuant to section 415B-10, which shall set forth:

(1) The name of the corporation;

(2) The period of the corporation's duration, which may be perpetual;

(3) The purpose or purposes for which the corporation is organized;

(4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for the distribution of assets on dissolution or final liquidation;

(5) The mailing address of the corporation's initial or principal office[;] and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation's initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available[, the mailing address, which may be a] for the corporation's initial or principal office or for the corporation's regis-

tered office, the rural route post office or post office box designated or made available by the United States Postal Service may be listed;

(6) The number of directors constituting the initial board of directors and the names and residence addresses of the individuals who are to serve as the initial directors and initial officers; and

(7) If a corporation has no members, that fact shall be set forth.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

SECTION 19. Section 415B-61, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§415B-61[]] Board of directors.** The affairs of a corporation shall be managed by a board of directors[, of which one director shall be a resident of this State]. The [other] directors need not be residents of this State or members of the corporation unless required by the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may prescribe other qualifications for directors."

SECTION 20. Section 415B-84, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-84 Articles of merger or consolidation.** The articles of merger or articles of consolidation shall be delivered to the director for filing and shall set forth:

(1) [The] That the plan of merger or the plan of consolidation[, including] has been approved and signed by the board of directors of each corporation, in accordance with section 415B-83, and a statement of the jurisdiction of incorporation if a foreign corporation is involved;

(2) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:

(A) [a] A statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting, and that the plan received at least two-thirds of the votes which members present at the meeting or represented by proxy were entitled to cast[,]; or

(B) [a] A statement that the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; [and]

(3) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of this fact, the date of the meeting of the board of directors at which the plan of merger or consolidation was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office[.]; and

(4) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation.

After the articles of merger or articles of consolidation have been delivered to the director and filed, the certificate of merger or certificate of consolidation shall be issued by the director."

SECTION 21. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Within [ninety days] two years after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the [ninety-day] applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability partnership, or such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter."

SECTION 22. Section 415B-122, Hawaii Revised Statutes, is amended to read as follows:

"§415B-122 Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless its corporate name:

(1) Is not the same as, or substantially identical to, the name of any profit or nonprofit corporation, partnership, [or] limited liability company, or limited liability partnership existing under the laws of this State, or any profit or nonprofit foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business or conduct affairs in this State, or a corporate or trade name, trademark, or service mark reserved or registered pursuant to the laws of this State; and

(2) Is transliterated into letters of the English alphabet, if the name is not in English."

SECTION 23. Section 425-6, Hawaii Revised Statutes, is amended to read as follows:

"§425-6 Partnership name. (a) No statement or certificate of any partnership having a name substantially identical [with] to the name of any corporation, partnership, [or] limited liability company, or limited liability partnership registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered shall be recorded by the director. The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, [or] limited liability company, or limited liability partnership name, trade name, trademark, or service mark.

(b) The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section."

SECTION 24. Section 425-14, Hawaii Revised Statutes, is amended to read as follows:

"§425-14 Cancellation of registration. (a) If any general partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director of commerce and consumer affairs may cancel the registration or the certificate, as the case may be, of such partnership. The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.

(b) Within two years after the involuntary cancellation of a general partnership under this section, the registration statement of the general partnership may be reinstated by the director upon written application executed by any partner of the general partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfiled. Within the applicable reinstatement period, should the name of the general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the general partnership pursuant to the amendment provisions of this chapter."

SECTION 25. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No certificate of a limited liability partnership or registration for a foreign limited liability partnership shall be accepted by the director if the name of the partnership:

(1) Is the same as, or substantially identical to, the name of any domestic corporation [or], domestic partnership, domestic limited liability company, or domestic limited liability partnership, [whether general, limited, limited liability, domestic, or foreign, previously authorized or registered to do business] existing or registered under the laws of the State, or [with] any foreign corporation, foreign partnership, foreign limited liability company, or foreign limited liability partnership authorized to transact business in the State, or any trade name, service mark, or trademark [previously] registered [under the laws of the] in this State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the partnership applying for registration files with the director [any one] either of the following:
   (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited liability partnership to use the name in this State; and
(2) In the case of a foreign limited liability partnership, is not transliterated into letters of the English alphabet, if the name is not in English."

SECTION 26. Section 425-171, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§425-171[]] Cancellation of registration.** (a) If any limited liability partnership or foreign limited liability partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director may cancel the registration of the partnership. The cancellation of the registration shall not relieve the partners of liability for the penalties due to the State for the failure to file any statement or certificates required by this part.

(b) Within two years after the involuntary cancellation of a domestic or foreign limited liability partnership under this section, the registration statement of the domestic or foreign limited liability partnership may be reinstated by the director

upon written application executed by any partner of the limited liability partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfiled. Within the applicable reinstatement period, should the name of the limited liability partnership, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the limited liability partnership pursuant to the amendment provisions of this chapter."

SECTION 27. Section 425-178, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For purposes of subsection (a), a limited liability partnership is a professional partnership if it is engaged in the delivery of professional services under chapters 442, 448, 453, 455, 457, [458,] 459, 460, 461, 463E, 465, 466, and 471."

SECTION 28. Section 425D-102[1], Hawaii Revised Statutes, is amended to read as follows:

"**§425D-102 Name.** (a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) May not contain the name of a limited partner unless:
   (A) It is also the name of a general partner or the corporate name of a corporate general partner[,]; or[2]
   (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
(2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, domestic partnership, [or] domestic limited liability company, or domestic limited liability partnership existing or registered under the laws of this State, any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark [previously] registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter, except that this provision shall not apply if the applicant filed with the director either of the following:
   (A) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words [may be] are added to make the name distinguishable from the other name[,]; or
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 29. Section 425D-203.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within [ninety days] two years after the involuntary cancellation of a certificate of limited partnership under this section, the certificate of limited partnership may be reinstated by the director upon written application executed by any

general partner of the limited partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfiled. Within the [ninety-day] applicable reinstatement period, should the name of the limited partnership, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the [involuntarily canceled] limited partnership pursuant to the amendment provisions of this chapter."

SECTION 30. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No registration for a foreign limited partnership shall be accepted by the director if the name of such foreign limited partnership:

(1) Is the same as, or substantially identical to, the name of any domestic [or foreign] corporation, domestic partnership [whether general or limited, or], domestic limited liability company, or domestic limited liability partnership [previously authorized or] existing or registered to do business under the laws of [the] this State, or any foreign corporation, foreign partnership, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or [with] any trade name, service mark, or trademark [previously] registered [under the laws of the] in this State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the foreign limited partnership applying for registration files with the director [any one] either of the following:
   (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name; or
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
(2) Is not transliterated into letters of the English alphabet, if the name is not in English."

SECTION 31. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as authorized by subsections (c) and (d), the name of a limited liability company must not be the same as, or substantially identical to:

(1) The name of any corporation, partnership, [or] limited liability company, or limited liability partnership existing under the laws of this State;
(2) The name of any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State;
(3) A name the exclusive right to which is reserved under the laws of this State;

(4) A fictitious name approved under section 428-1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
(5) Any trade name, service mark, or trademark registered in this State."

SECTION 32. Section 428-905, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After approval of the plan of merger under section 428-904(c) and compliance with section 428-908, if applicable, unless the merger is abandoned under section 428-904(d), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth and contain:
(1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger;
[(2) The plan of merger;
(3)] (2) A statement[, signed by each entity that is a party to the merger,] that the plan of merger was approved[;] by each entity that is a party to the merger;
[(4)] (3) As to each entity, the total authorized votes and the number voted for and against the plan;
[(5)] (4) The name and address of the surviving company;
[(6)] (5) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger;
[(7)] (6) If the surviving entity is a foreign limited liability company, it shall file with the director:
(A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
(B) An irrevocable appointment of a resident of this State including the street address, as its agent to accept service of process in any such proceeding; and
(C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder or partner to receive payment for their interest against the surviving entity; and
[(8)] (7) A statement of compliance with section 428-908, if applicable."

SECTION 33. Section 428-1005, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as authorized by subsections (c) and (d), the name, including a fictitious name, of a foreign limited liability company shall not be the same as or substantially identical to:
(1) The name of any corporation, partnership, [or] limited liability company, or limited liability partnership existing under the laws of this State;
(2) The name of any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State;
(3) A name, the exclusive right to which is reserved under the laws of this State;

(4) The fictitious name of another foreign limited liability company authorized to transact business in this State; or
(5) Any trade name, service mark, or trademark registered in this State."

SECTION 34. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any partnership, corporation, [or] limited liability company, or limited liability partnership registered in accordance with the laws on partnerships, corporations, [or] limited liability companies[.], or limited liability partnerships."

SECTION 35. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 36. This Act shall take effect upon its approval; provided that:
(1) Sections 11, 15, 21, 24, 26, and 19 shall take effect on July 1, 1999;
(2) Any corporation, professional corporation, or nonprofit corporation involuntarily dissolved prior to July 1, 1999, may be reinstated within ninety days, pursuant to the requirements, other than the two-year requirement, of sections 415-95, 415A-18, or 415B-98, Hawaii Revised Statutes (HRS), respectively; and
(3) Any general partnership, domestic or foreign limited liability partnership, or certificate of limited partnership involuntarily cancelled prior to July 1, 1999, may be reinstated within ninety days, pursuant to the requirements, other than the two-year requirement, of section 425-14, 425-171, or 425D-203.6, HRS, respectively.

(Approved July 2, 1999.)

Notes

1. So in original.
2. "Or" should not be underscored.
3. Edited pursuant to HRS §23G-16.5.

ACT 250 S.B. NO. 1142

A Bill for an Act Relating to the Names of Corporations, Partnerships, and Limited Liability Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§415- Administrative order of abatement for infringement of corporate name. (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of any domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or

confusingly similar to, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but:
   (A) Require the entity to register a new trade name with the director; and
   (B) Require the entity to conduct business in this State under this new trade name;

   or

(2) (A) Require the entity to change its registered name;
   (B) Require the entity to register the new name with the director; and
   (C) Require the entity to conduct business in this State under its new name.

If the entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 2. Chapter 415A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§415A- Administrative order of abatement for infringement of corporate name.** (a) Any professional corporation in good standing claiming that the name of any domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but:
   (A) Require the entity to register a new trade name with the director; and

(B) Require the entity to conduct business in this State under this new trade name;

or

(2) (A) Require the entity to change its registered name;
(B) Require the entity to register the new name with the director; and
(C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 3. Chapter 415B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§415B- Administrative order of abatement for infringement of corporate name.** (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but:
(A) Require the entity to register a new trade name with the director; and
(B) Require the entity to conduct business in this State under this new trade name;

or

(2) (A) Require the entity to change its registered name;
(B) Require the entity to register the new name with the director; and
(C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity

shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing in the court a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 4. Chapter 425, Hawaii Revised Statutes, is amended by adding to part VI a new section to be appropriately designated and to read as follows:

"**§425- Administrative order of abatement for infringement of partnership name.** (a) Any domestic partnership in good standing formed under this chapter or foreign partnership authorized to do business in this State under this chapter claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held[1] accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but:
    (A) Require the entity to register a new trade name with the director; and
    (B) Require the entity to conduct business in this State under this new trade name;

    or

(2) (A) Require the entity to change its registered name;
    (B) Require the entity to register the new name with the director; and
    (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 5. Chapter 425D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§425D- Administrative order of abatement for infringement of limited partnership name.** (a) Any domestic limited partnership in good standing or foreign limited partnership authorized to do business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but:
   (A) Require the entity to register a new trade name with the director; and
   (B) Require the entity to conduct business in this State under this new trade name;

   or

(2) (A) Require the entity to change its registered name;
   (B) Require the entity to register the new name with the director; and
   (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely file.[1] The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last know[1] mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 6. Chapter 428, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§428- Administrative order of abatement for infringement of limited liability company name.** (a) Any domestic limited liability company in good standing or foreign limited liability company authorized to do business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or foreign limited liability company authorized to transact business in the State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name

should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but:
    (A) Require the entity to register a new trade name with the director; and
    (B) Require the entity to conduct business in this State under this new trade name;

    or

(2) (A) Require the entity to change its registered name;
    (B) Require the entity to register the new name with the director; and
    (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be do novo.[1] Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 7. New statutory material is underscored.[2]

SECTION 8. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 251 S.B. NO. 1149

A Bill for an Act Relating to Enforcement of Wage Laws.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 104-24, Hawaii Revised Statutes, is amended to read as follows:

"**§104-24 Violations; penalties.** (a) Where the department finds that a first violation of this chapter has been committed, the department shall assess a penalty [of not more than $1,000 for each offense.] equal to ten per cent of the amount of back wages found due or $25 per offense, whichever is greater.

[(b) Where a second or third violation occurs, whether on the same contract or another, within two years of the first violation, the director, after proper notice and opportunity for hearing, shall order the person or firm in violation:

(1) If it be a second violation, to pay a penalty of ten per cent of the contract amount; or

(2) If it be a third violation, to be suspended as prescribed in section 104-25.]

(b) Where the department finds that a second violation of this chapter has been committed, whether on the same contract or another, within two years of the first notification of violation, the department, after proper notice and opportunity for hearing, shall order the person or firm in violation to pay a penalty equal to the amount of back wages found due or $100 for each offense, whichever is greater.

(c) Where the department finds that a third violation of this chapter has been committed, whether on the same contract or another, within two years of the second notification of violation, the department, after proper notice and opportunity for hearing, shall order the person or firm in violation:

(1) To pay a penalty equal to two times the amount of back wages found due or $200 for each offense, whichever is greater; and

(2) To be suspended from doing any new work on any public work of a governmental contracting agency for a period of three years except as provided in section 104-25(a)(2). "New work on any public work" includes any public works project in which the suspended person or firm has not begun work at the job site as of the date of the suspension order.

(d) A first, second, or third violation refers to each investigation involving one or more projects in which the department finds that a contractor has failed to comply with this chapter.

(e) For purposes of this section, "offense" means each section of this chapter under which the contractor is cited; provided that, with respect to prevailing wage and overtime citations under section 104-2, each employee and each project shall be considered a separate offense."

SECTION 2. Section 104-25, Hawaii Revised Statutes, is amended to read as follows:

"**§104-25 Suspension.** [(a) The director shall suspend a person or firm from doing any work on any public work of a governmental contracting agency for a period of three years if the person or firm:

(1) Commits a third violation of this chapter within two years from the date of the first violation;

(2) Fails to make the person's or firm's employees whole for wages or overtime pay due under the contract; or

(3) Fails to pay any penalty assessed.] (a) The director shall suspend a person or firm as follows:

(1) For a first or second violation, if a person or firm fails to pay wages found due, any penalty assessed, or both, the person or firm shall be immediately suspended from doing any work on any public work of a governmental contracting agency until all wages and penalties are paid in full; and

(2) For a third violation, the suspension shall be as prescribed in section 104-24(c); provided that, if the person or firm continues to violate this chapter or fails to pay wages found due or any penalty assessed, or both, then the contractor shall immediately be suspended from doing any work on any public work of a governmental contracting agency for a mandatory three-year period. If after the three-year suspension period the wages found due or penalties assessed are still unpaid, the suspension shall remain in force until payment is made in full.

(b) The director shall immediately notify the comptroller and the auditor or director of finance of the county of any suspension order.

[(c) On application by the suspended person or firm, no less than one year from the date of suspension, the director, after a hearing, may shorten the term of suspension; provided that the contractor or subcontractor has made the contractor's or subcontractor's employees whole for wages or overtime pay due and has paid to the director all penalties assessed under this chapter.

(d)] (c) No contract shall be awarded to the person or firm so suspended or to any firm, corporation, partnership, or association in which the person or firm has an interest, direct or indirect, until three years have elapsed from the date of suspension, unless the period of suspension is reduced as herein provided. Any contract awarded in violation of this subsection shall be void."

SECTION 3. Section 387-12, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Collection suits; attorney's fee; assignments; relief from costs. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant[,] and costs of the action. At the request of any person paid less than the amount to which the person is entitled under this chapter, the director [of labor and industrial relations] may take an assignment in trust for the assigning employee of the full amount to which the employee is entitled under this subsection and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court in the event the director prevails. The director shall not be required to pay the filing fee[,] or other costs[,] in connection with such action[.], including the opposing party's attorney's fees and costs. The director, in case of suit, may join various claimants against the same employer in one cause of action. The right provided by this [paragraph] subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation owing to the employee under section 387-2 or 387-3 by an employer liable therefor under this section."

SECTION 4. Section 388-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow interest of six per cent per year from the date the wages were due, costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant. The director shall not be required to [pay]:

(1) Pay the filing fee or other costs or fees of any nature, including the opposing party's fees and costs; or [to file]

(2) File a bond or other security of any nature, in connection with such action [or], with proceedings supplementary thereto, or as a condition precedent to the availability to the director of any process in aid of such

action or proceedings. The director may join various claimants in one preferred claim or lien, and in case of suit join them in one cause of action."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 252 S.B. NO. 1160

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Ephedrine" includes any synthetic compound, salt, derivative, mixture, or preparation extracted from the plant (genus) Ephedra that contains the substance ephedrine.</u>"

SECTION 2. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alpha-ethyltryptamine (AET);
(2) [2,5-dimethoxy-4-ethylamphet-amine (DOET);] <u>2,5-dimethoxy-4-ethylamphetamine (DOET);</u>
(3) 2,5-dimethoxyamphetamine (2,5-DMA);
(4) 3,4-methylenedioxy amphetamine;
(5) 3,4-methylenedioxymethamphetamine (MDMA);
(6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
(7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
(8) 5-methoxy-3,4-methylenedioxy-amphetamine;
(9) 4-bromo-2,5-dimethoxy-amphetamine (4-bromo-2,5-DMA);
(10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
(11) 3,4,5-trimethoxy amphetamine;
(12) Bufotenine;
(13) 4-methoxyamphetamine (PMA);
(14) Diethyltryptamine;
(15) Dimethyltryptamine;
(16) 4-methyl-2,5-dimethoxy-amphetamine;
(17) [Gamma hydroxybuterate (GHB);] <u>Gamma hydroxybutyrate (GHB);</u>
(18) Ibogaine;
(19) Lysergic acid diethylamide;
(20) Marijuana;
(21) Parahexyl;

(22) Mescaline;
(23) Peyote;
(24) N-ethyl-3-piperidyl benzilate;
(25) N-methyl-3-piperidyl benzilate;
(26) Psilocybin;
(27) Psilocyn;
(28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);
(29) Tetrahydrocannabinols;
(30) Ethylamine analog of phencyclidine (PCE);
(31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
(32) Thiophene analog of phencyclidine (TPCP; TCP).''

SECTION 3. Section 329-31.5, Hawaii Revised Statutes, is amended to read as follows:

''[[]§329-31.5[]] **Clinics.** Registration as a clinic is required when an out-patient medical facility maintains centralized ordering, storage, and record keeping of controlled substances to be administered and/or dispensed to patients. Registration of a clinic requires that:

(1) Each location where controlled substances are stocked be registered by name, location, and designated principal practitioner or affiliated pharmacy. The principal practitioner or affiliated pharmacy shall be responsible for the accurate maintenance of records which document all controlled substances ordered, received, administered, and dispensed within the clinic;
(2) Controlled substances stocked at a clinic under the clinic State of Hawaii and Drug Enforcement Administration registration numbers be administered to clinic patients by licensed or registered health care professionals under the supervision of the treating practitioner;
(3) Controlled substances stocked at a clinic under the clinic State of Hawaii and Drug Enforcement Administration registration numbers be dispensed to clinic patients only by the treating practitioner for emergency and urgent care, when a written prescription would not be practical;
(4) A centralized record signed and dated by the treating practitioner which indicates the patient, controlled substance, date and time of administration and/or dispensing be maintained and stored with the current controlled substance inventory, ordering, and receipt records. These records shall be maintained for [two] five years; and
(5) A clinic practitioner who individually maintains a personal stock of controlled substances does so under the practitioner's individual State and Drug Enforcement Administration registration number. These controlled substances [must] shall be kept separate from clinic stock and cannot be accessed by other practitioners.

The term ''affiliated pharmacy'' as used in this section means a licensed pharmacy which supplies and monitors the controlled substances stocked in a registered clinic.

The term ''clinic'' as used in this section means an out-patient medical facility owned and operated by a legal entity that employs individual practitioners for the treatment of patients and which may or may not provide after-hours emergency or urgent care.

The term ''principal physician'' means the practitioner in a clinic whose signature appears on the clinic's State of Hawaii and Drug Enforcement Administration registrations, and who is responsible for the proper maintenance, storage, and

record keeping of the controlled substances ordered and centrally stocked in the clinic using the clinic Drug Enforcement Administration registration number."

SECTION 4. Section 329-38, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

"(a) No controlled substance in schedule II may be dispensed without a written prescription of a practitioner, except:

(1) In an emergency situation, those drugs may be dispensed upon oral prescription of a practitioner; provided that promptly thereafter, the prescription is reduced to writing by the practitioner and filed by the pharmacy; or

(2) When dispensed directly by a practitioner, other than a pharmacist, to the ultimate user. The practitioner in dispensing a controlled substance in schedule II shall affix to the package a label showing:
   (A) The date of dispensing;
   (B) The name, strength, and quantity issued of the drug;
   (C) The dispensing practitioner's name and address;
   (D) The name of the patient;
   (E) The date the potency of the drug expires if that date is available from the manufacturer or principal labeler; and
   (F) Directions for use, and cautionary statements, if any, contained in the prescription or as required by law.

   A complete and accurate record of all schedule II controlled substances ordered, administered, prescribed, and dispensed shall be maintained for [two] five years. All schedule II prescriptions shall be written by the practitioner in duplicate. Prescriptions and records of dispensing shall otherwise be retained in conformance with the requirements of section 329-36. No prescription for a controlled substance in schedule II may be refilled.

(b) The transfer of original prescription information for a controlled substance listed in schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis, subject to the following requirements:

(1) The transfer shall be communicated directly between two licensed pharmacists, and the transferring pharmacist shall:
   (A) Write or otherwise place the word "VOID" on the face of the invalidated prescription;
   (B) Record on the reverse of the invalidated prescription the name, address, and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and
   (C) Record the date of the transfer and the name of the pharmacist transferring the information;

(2) The pharmacist receiving the transferred prescription information shall:
   (A) Write or otherwise place the word "transfer" on the face of the transferred prescription;
   (B) Record all information required to be on a prescription, including:
      (i) The date of issuance of original prescription;
      (ii) The original number of refills authorized on original prescription;
      (iii) The date of original dispensing;

(iv) The number of valid refills remaining and date of last refill;
(v) The pharmacy's name, address, DEA registration number, and original prescription number from which the prescription information was transferred; and
(vi) The name of transferor pharmacist;

(3) Both the original and transferred prescription must be maintained for a period of [two] five years from the date of last refill; and
(4) The procedure allowing the transfer of prescription information for refill purposes is permissible only between pharmacies located on the same island in this State.

Failure to comply with this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.

(c) No controlled substance in schedule III, IV, or V may be dispensed without a written or oral prescription of a practitioner, except when a controlled substance is dispensed directly by a practitioner, other than a pharmacist, to an ultimate user. The practitioner, in dispensing a controlled substance in schedule III, IV, or V, shall affix to the package a label showing:

(1) The date of dispensing;
(2) The name, strength, and quantity issued of the drug;
(3) The dispensing practitioner's name and business address;
(4) The name of the patient;
(5) The date the potency of the drug expires, if that date is available from the manufacturer or the principal labeler;
(6) Directions for use; and
(7) Cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for [two] five years. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36 unless otherwise provided by law. Prescriptions may not be filled or refilled more than three months after the date of the prescription or be refilled more than two times after the date of the prescription, unless the prescription is renewed by the practitioner."

2. By amending subsection (e) to read:

"(e) Prescriptions for controlled substances shall be issued only as follows:

(1) All prescriptions for controlled substances shall be dated as of, and signed on, the day when the prescriptions were issued and shall bear:
(A) The full name and address of the patient; and
(B) The name, address, telephone number, and registration number of the practitioner.

The controlled substance prescriptions shall be no larger than four and one-half inches by six and one-half inches and no smaller than four inches by five inches.

A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or by typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all

essential respects to this chapter and any rules adopted pursuant to this chapter. A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section;

(2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:
   (A) The registration number of the hospital or other institution; and
   (B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

   The hospital or other institution shall forward a copy of this special internal code number list to the department as often as necessary to update the department with any additions or deletions. Failure to comply with this paragraph shall result in the suspension of that facility's privilege to fill controlled substance prescriptions at pharmacies outside of the hospital or other institution. Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician; and

(3) An official exempted from registration shall include on all prescriptions issued by the official:
   (A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and
   (B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee shall be the employee's Social Security identification number.

   Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer."

SECTION 5. Section 329-46, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§329-46[]] Prohibited acts related to visits to more than one practitioner to obtain controlled substance prescriptions.** (a) It is unlawful for any person knowingly or intentionally to visit more than one practitioner and withhold information regarding previous practitioner visits for the purpose of obtaining one or more controlled substance prescriptions for quantities that:

(1) Exceed what any single practitioner would have prescribed or dispensed for the time period and legitimate medical purpose represented; and

(2) Would constitute an offense pursuant to part IV of chapter 712.

(b) Information communicated to a physician in an effort to unlawfully procure a controlled substance, or to unlawfully procure the administration, prescribing, or dispensing of any controlled substance shall not be deemed a privileged communication.

[(b)] (c) Any person who violates this section is guilty of a crime which is of the grade and class identical to that imposed under part IV of chapter 712 for the same type and equivalent quantity of controlled substance."

SECTION 6. Section 329-59, Hawaii Revised Statutes, is amended to read as follows:

"[[]§329-59[]] **Controlled substance registration revolving fund; established.** (a) There is established within the state treasury the controlled substance registration revolving fund. The fund shall be expended at the discretion of the director of public safety for the purpose of:

(1) Offsetting the cost of the electronic prescription accountability system and the registration and control of the manufacture, distribution, prescription, and dispensation of controlled substances and regulated chemicals listed under section 329-61, within the State; and

(2) Funding positions authorized by the legislature by law.

(b) The fund shall consist of all moneys derived from fees collected pursuant to [section] sections 329-31 and 329-67 and legislative appropriations. All fees collected pursuant to [section] sections 329-31 and 329-67 shall be deposited in the controlled substance registration revolving fund."

SECTION 7. Part VI of chapter 329, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"**PART VI. [PRECURSORS TO] REGULATED CHEMICALS FOR THE MANUFACTURE OF CONTROLLED SUBSTANCES**"

SECTION 8. Section 329-61, Hawaii Revised Statutes, is amended to read as follows:

"**§329-61 Substances subject to reporting.** (a) List 1 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State or for use in this State shall submit a report to the department of public safety of all those transactions:

(1) Phenyl-2-propanone;
(2) Methylamine;
(3) Phenylacetic acid;
(4) Ephedrine;
(5) Pseudoephedrine;
(6) Norpseudoephedrine;
(7) Phenylpropanolamine;
(8) Hydriodic acid;
(9) Benzyl cyanide;
(10) Benzyl chloride;
(11) N-methylformamide;
(12) N-methylephedrine;
(13) N-ethylephedrine;
(14) N-ethylpseudoephedrine;
(15) N-methylpseudoephedrine;
(16) Chloroephedrine;
(17) Chloropseudoephedrine;
(18) Ethylamine;
(19) D-lysergic acid;
(20) Ergotamine tartrate;
(21) Piperidine;
(22) N-acetylanthranilic acid;
(23) Anthranilic acid;
(24) Propionic anhydride;
(25) Isosafrole;
(26) Safrole;

(27) Piperonal;
(28) Thionychloride;
(29) Ergonovine maleate;
(30) 3,4-Methylenedioxyphenyl-2-propanone;
(31) Benzaldehyde;
(32) Nitroethane[.];
(33) Red phosphorus;
(34) Iodine crystals;
(35) Gamma butyrolactone (GBL).

(b) List 2 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any extraordinary quantity of any of the following chemicals, or sells, transfers, or otherwise furnishes the chemicals through the use of an uncommon method of payment or delivery or under any other circumstances that may make that person believe that the following chemicals could be used in violation of this part by any person in this State, shall report to the department all those transactions of:

(1) Acetic anhydride;
(2) Acetone;
(3) Benzyl chloride;
(4) Ethyl ether;
(5) Potassium permanganate;
(6) 2-Butanone (or methyl ethyl ketone or MEK);
(7) Toluene;
(8) Hydrochloric acid;
(9) Sulfuric acid;
(10) Methyl isobutyl ketone (MIBK).''

SECTION 9. Section 329-63, Hawaii Revised Statutes, is amended to read as follows:

''**[[ ]§329-63[ ]] [Report of transaction.] Person required to keep records and file reports.** (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes a substance specified in section 329-61 [for use by a person in this State, not less than twenty-one days prior to delivery of the substance, shall submit a report of the transaction, which includes the identification information specified in section 329-62 to the department of public safety. However, the department of public safety may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the department of public safety determines that either of the following exist:

(1) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; or
(2) The recipient has established a record of utilization of the substance for lawful purposes.], or an encapsulating or tableting machine shall keep a record of each transaction for a period of two years after the date of transaction.

(b) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes a substance specified in section 329-61, for use by a person in this State shall report to the administrator the following:

(1) Any regulated transaction involving:
(A) An above threshold quantity;

(B) Any suspicious or out-of-the-ordinary quantity of a chemical listed in 329-61;
(C) An uncommon method of payment or delivery; or
(D) Any other circumstances that the regulated person believes may indicate that the regulated chemical will be used in violation of this part;

(2) Any proposed regulated transaction with a person whose description or other identifying characteristics the department has previously furnished to the regulated person;

(3) Any unusual or excessive loss or disappearance of a regulated chemical listed under section 329-61 that is under the control of the regulated person, to include exempted items. The regulated person responsible for reporting a loss in-transit is the supplier;

(4) Any regulated transaction of a tableting machine or an encapsulating machine; and

(5) All single entity ephedrine transactions.

[(b)] (c) The department of public safety shall provide a common reporting form for the substances in section 329-61 [which] that contains at least the following information:

(1) Name of the substance;
(2) Quantity of the substance sold, transferred, or furnished;
(3) The date the substance was sold, transferred, or furnished;
(4) The name and address of the person buying or receiving the substance; and
(5) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing such substance.

(d) Each report submitted pursuant to subsection (b) of this section, whenever possible, shall be made orally to the department at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. A written report shall also be submitted to the department following an oral report."

SECTION 10. Section 329-64, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§329-64[]] Exceptions.** [This] (a) The requirements imposed by sections 329-62, 329-63, and 329-67 of this part shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to patients;

(3) Any manufacturer or wholesaler licensed by the State who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian; and

(4) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 United States Code Sec. 301 et seq.) or regulations adopted thereunder.

(5) Any "dietary supplement" as defined by the federal Food, Drug, and Cosmetic Act (21 United States Code sec. 301) containing ephedrine

alkaloids extracted from any species of Ephedra that meets all of the following criteria:

(A) It contains, per dosage unit or serving, not more than twenty-five milligrams of ephedrine alkaloids and its labeling does not suggest or recommend a total daily intake of more than one hundred milligrams of ephedrine alkaloids;

(B) It contains no hydrochloride or sulfate salts of ephedrine alkaloids;

(C) It is packaged with a prominent label securely affixed to each package that states all of the following:

(i) The amount in milligrams of ephedrine alkaloids in a dosage unit or serving;

(ii) The amount of the dietary supplement that constitutes a dosage unit or serving; and

(iii) The maximum recommended dosage of ephedrine alkaloids for a healthy adult human is not more than one hundred milligrams in a twenty-four hour period.

(b) Notwithstanding the exceptions created by subsection (a) of this section, any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise distributes in this State any list 1 or list 2 chemical, as defined in section 329-61, and who is required to register with the federal Drug Enforcement Administration as a list I chemical distributor under federal law (or who registers as a controlled substance distributor in lieu thereof), shall submit a copy of that registration application to the department of public safety. When such application is granted, the distributor shall file a copy of the federal Drug Enforcement Administration List I Chemical Registration (or Controlled Substance Registration) with the department. The distributor shall also file with the department a duplicate copy of any reports required under federal law at the same time as such reports are filed with the federal Drug Enforcement Administration for any transactions involving List I Chemicals that shall be shipped into or otherwise transferred or distributed in this State.

(c) The exceptions set forth in subsection (a) of this section shall not be a defense to any offense as set forth in section 329-65 (c) and (d).''

SECTION 11. Section 329-65, Hawaii Revised Statutes, is amended to read as follows:

"**§329-65 Penalty.** (a) Any manufacturer, wholesaler, retailer, or other person who does not submit a report as required by section 329-63 or who knowingly submits a report with false or fictitious information shall be fined not more than $5,000, or imprisoned not more than thirty days, or both.

(b) Any manufacturer, wholesaler, retailer, or other person who has previously been convicted of violating subsection (a), upon a subsequent conviction thereof, shall be fined not more than $100,000, or imprisoned not more than one year, or both.

(c) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the substances listed in section 329-61 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture any controlled substance shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(d) Any manufacturer, wholesaler, retailer, or other person who possesses any of the substances listed in section 329-61 with the intent to illegally manufacture any controlled substance shall be fined not more than $100,000, or imprisoned not more than ten years, or both.

(e) Any person who possesses, sells, distributes, purchases for resale, or causes to be sold, distributed, or purchased for resale any ephedrine-containing product with a label that claims or implies that consumption of the product will produce effects such as ecstasy, euphoria, increased sexual sensations, legal "highs", and other similar effects shall be fined not more than $5,000, or imprisoned not more than one year, or both."

SECTION 12. Section 329-67, Hawaii Revised Statutes, is amended by amending subsections (d), (e), and (f) to read as follows:

"(d) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department of public safety [which shall not exceed the applications processing costs.] in accordance with the department's rules.

(e) A permit granted pursuant to this part may be renewed one year from the date of issuance, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee [not to exceed the application processing costs.] in accordance with the department's rules.

(f)(1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes, or receives any substance specified in section 329-61 without a permit shall be [fined not more than $5,000, or imprisoned not more than thirty days, or both;] guilty of a misdemeanor; and

(2) Any manufacturer, wholesaler, retailer, or other person who has previously been convicted of violating section 329-67(a), upon a subsequent conviction thereof shall be [fined not more than $100,000, or imprisoned not more than one year, or both.] guilty of a class C felony."

SECTION 13. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Under the system:

(1) Information shall be reported in numerical format, not less than once every seven days, on the filling of prescriptions for designated controlled substances and the dispensing of drug samples by a licensed practitioner; and

(2) Each dispenser shall maintain a record of such filled prescriptions, including all information described in subsection (c), for a period of [two] five years. Each dispenser shall keep these records available for inspection and copying by the designated state agency."

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 15. Statutory material to be repealed is bracketed, except bracketed material contained within the name of a substance listed in section 329-14(d)(28), Hawaii Revised Statutes, in section 2 of this Act is not to be repealed. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

ACT 253 S.B. NO. 1180

A Bill for an Act Relating to the Income Taxation of Nonresidents.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the calculation of the income tax of nonresidents established in Act 281, Session Laws of Hawaii 1997, and codified as section 235-4.3, Hawaii Revised Statutes, has proved to result in anomalies and difficulties for both the taxpayer and the department of taxation. The purpose of this Act is to enact a new method of calculating the income tax of nonresidents.

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

(1) $1,900 in the case of:
   (A) A joint return as provided by section 235-93[,]; or
   (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code)[,];
(2) $1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code)[,];
(3) $1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household[,]; or
(4) $950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of $500 or such individual's earned income. Section 63(f) shall not be operative in this State.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5."

SECTION 3. Section 235-5, Hawaii Revised Statutes, is amended to read as follows:

"§235-5 Allocation of income of persons not taxable upon entire income. (a) This section applies to income not subject to part II of this chapter, including nonbusiness income and certain section 235-22 income.

(b) Income (including gains), also losses, from property owned in the State and from any other source in the State shall be determined by an allocation and separate accounting so far as practicable. Losses from property owned outside the State and from other sources outside the State shall not be deducted.

(c) Deductions connected with income taxable under this chapter shall be allowed, but deductions connected with income not taxable under this chapter shall not be allowed. Deductions from adjusted gross income that are not connected with particular property or income, such as medical expenses, shall be allowed only to the extent of the ratio of the adjusted gross income attributed to this State to the entire adjusted gross income computed without regard to source in the State.

Deductions by individual taxpayers from gross income for alimony and separate maintenance payments under section 215 of the Internal Revenue Code shall be allowed only to the extent of the ratio of gross income attributed to this State to the entire gross income computed without regard to source in this State; provided that as used in this sentence "gross income" means gross income as defined in the Internal Revenue Code, minus the deductions allowed by section 62 of the Internal Revenue Code, other than the deductions for alimony and separate maintenance payments under section 215 of the Internal Revenue Code.

Deductions by individual taxpayers from gross income for pension, profit-sharing, stock bonus plans, and other plans qualified under sections 401 to 409 of the Internal Revenue Code, as such sections are operative for the purposes of this chapter, shall be allowed only to the extent that such deductions are attributed to compensation earned in this State.

(d) The standard deduction as provided in section 235-2.4 and personal exemptions as provided in section 235-54 shall be allowed only to the extent of the ratio of the adjusted gross income attributed to this State to the entire adjusted gross income computed without regard to source in the State.

[(d)] (e) If in the opinion of the department the allocations hereinabove provided do not clearly and accurately reflect the actual amount of the adjusted gross income and taxable income received or derived from all property owned and any and every other source in the State, or if any person shows that the allocations hereinabove provided result in adjusted gross income or taxable income being attributed to the State in a larger amount than is just and equitable, then the same shall be determined, allocated, and apportioned under such rules, processes, and formulas as the department prescribes as being just and equitable."

SECTION 4. Section 235-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In computing the taxable income of any individual, there shall be deducted, in lieu of the personal exemptions allowed by the Internal Revenue Code, personal exemptions computed as follows: Ascertain the number of exemptions which the individual can lawfully claim under the Internal Revenue Code, add an additional exemption for the taxpayer or the taxpayer's spouse who is sixty-five years of age or older within the taxable year, and multiply that number by $1,040, for taxable years beginning after December 31, 1984. A nonresident shall [be entitled to the same personal exemptions as a resident, without proration of] prorate the personal exemptions on account of income from sources outside the State[.] as provided in section 235-5. In the case of an individual with respect to whom an exemption under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the personal exemption amount applicable to such individual under this subsection for such individual's taxable year shall be zero."

SECTION 5. Section 235-4.3, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1998.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 254 S.B. NO. 1238

A Bill for an Act Relating to Professions and Occupations.[1]

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that government bureaucracy and red tape may be reduced by deregulating professions and vocations where appropriate. Streamlining government operations by terminating unnecessary programs will make government more cost-effective and efficient, an important and desirable outcome given Hawaii's struggling economy. Accordingly, the purpose of this Act is to:

(1) Repeal the regulation of real estate collection servicing agents and make conforming amendments to related sections of the Hawaii Revised Statutes. The legislature finds regulation of real estate collection servicing agents is unnecessary; regulation does not serve to protect the public health, safety, and welfare and should therefore be eliminated;
(2) Require that the legislative auditor report on whether regulation of barbering, beauty culture, and speech pathologists and audiologists should be continued or repealed, and if continued, whether it would be more efficient and cost-effective to regulate through a regulatory board, the department of commerce and consumer affairs, or some other agency or mechanism; and
(3) Require that the legislative reference bureau report on whether the dental licensing exam developed and used by the board of dental examiners appropriately tests for competence or is an undue exclusionary barrier to entry into the profession, and whether the examination should be replaced by any of four regional examinations.

PART I
REPEAL OF BUSINESS REGULATION

SECTION 2. Section 412:3-502, Hawaii Revised Statutes, is amended to read as follows:

"**§412:3-502 Foreign financial institution.** No foreign financial institution shall receive deposits, lend money, or pay checks, negotiate orders of withdrawal or share drafts from any [[]principal[]] office, branch, agency, automatic teller machine, or other location in this State, unless expressly authorized by this chapter, other laws of this State, or federal law; provided[,] that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an automatic teller machine network or from operating from any location in this State as a mortgage broker licensed under chapter 454, or as a real estate collection servicing agent [registered under chapter 454D]."

SECTION 3. Section 443B-1, Hawaii Revised Statutes, is amended by amending the definition of "collection agency" to read as follows:

"'"Collection agency" means any person, whether located within or outside this State, who by oneself or through others offers to undertake or holds oneself out

as being able to undertake or does undertake to collect for another person, claims or money due on accounts or other forms of indebtedness for a commission, fixed fee, or a portion of the sums so collected.

"Collection agency" includes:

(1) Any person using any name other than the person's own in collecting the person's own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed;

(2) Any person who, in the conduct of the person's business for a fee, regularly repossesses any merchandise or chattels for another; and

(3) Any person who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon the assigned claims or money due on accounts or other forms of indebtedness in the person's own name; provided that any suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignee[; provided further that any person who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation, mortgage loans and agreements of sale, whether or not the collection servicing agent receives any compensation or other consideration for one's services, shall fall within the purview of chapter 454D].

"Collection agency" does not include licensed attorneys at law acting within the scope of their profession, licensed real estate brokers, and salespersons residing in this State when engaged in the regular practice of their profession, nor banks, trust companies, building and loan associations, savings and loan associations, financial services loan companies, credit unions, companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit persons or in other similar capacity for a single employer who is not a collection agency, nor any public officer or any person acting under an order of court."

SECTION 4. Chapter 454D, Hawaii Revised Statutes, is repealed.

PART II
AUDITOR'S SUNSET REVIEW

SECTION 5. (a) The legislative auditor shall conduct a study, or a series of studies, as appropriate, as provided in subsection (b), regarding the regulation of the following professions or vocations:

(1) Speech pathologists and audiologists (chapter 468E, Hawaii Revised Statutes);

(2) Practice of barbering (chapter 438, Hawaii Revised Statutes); and

(3) Beauty culture (chapter 439, Hawaii Revised Statutes).

(b) With respect to the professions or vocations specified in subsection (a), the auditor shall:

(1) Determine whether, given the criteria in section 26H-2, Hawaii Revised Statutes, regulation of these professions or vocations should be continued or repealed;

(2) Upon concluding that regulation of any of these professions and vocations should continue, determine whether regulation would be more efficiently and cost effectively administered by:

(A) A regulatory board;

(B) The department of commerce and consumer affairs; or

(C) An alternative regulatory mechanism.

(c) The auditor shall submit to the legislature a report of the findings and recommendations concerning the regulation of speech pathologists and audiologists no later than twenty days before the convening of the regular session of 2000, and the regulation of barbering and beauty culture no later than twenty days before the convening of the regular session of 2001.

PART III
STUDY RELATING TO DENTISTRY

SECTION 6. The legislative reference bureau, with the assistance of the board of dental examiners and the department of commerce and consumer affairs, shall conduct a study of the state-constructed dental licensing examinations used by the board. The study shall include a determination of the following questions:

(1) Given examination pass rates since 1992, does the state constructed dental licensing examination, including proposed changes to the examination, appropriately test for professional competency in the field of dentistry or serve as an undue exclusionary barrier to entry to the profession? In considering this question, the legislative reference bureau shall compare the dental licensing examination pass rates of the following groups of applicants:
   (A) Graduates of institutions located in the United States and accredited by an accreditor recognized by the United States Secretary of Education;
   (B) Graduates of institutions located in the United States not accredited by an accreditor recognized by the United States Secretary of Education;
   (C) Graduates of institutions located in foreign countries that are accredited by the governments of those countries; and
   (D) Graduates of institutions located in foreign countries that are not accredited by the governments of those countries;
(2) Should any of the four regional dental examinations be used in lieu of, or as an alternative option to, the state-constructed dental licensing examination and, if so, under what conditions; and
(3) Any other questions pertinent to an evaluation and determination of the fairness of the state-constructed dental licensing examination under section 26H-2, Hawaii Revised Statutes, criteria.

The legislative reference bureau shall submit the requested report, with its findings, recommendations, and proposed legislation, if necessary, to the legislature not later than twenty days prior to the convening of the regular session of 2000.

SECTION 7. Statutory material to be repealed is bracketed.

SECTION 8. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

1. In prior draft "Vocations" appeared here.

ACT 255 H.B. NO. 1277

A Bill for an Act Relating to Wastewater Treatment Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of "public utility" to read as follows:

"'"Public utility" includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for the transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term:

(1) Shall include any person insofar as that person owns or operates a private sewer company or sewer facility;
(2) Shall include telecommunications carrier or telecommunications common carrier;
(3) Shall not include any person insofar as that person owns or operates an aerial transportation enterprise;
(4) Shall not include persons owning or operating taxicabs, as defined in this section;
(5) Shall not include common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
(6) Shall not include persons engaged in the business of warehousing or storage unless the commission finds that regulation thereof is necessary in the public interest;
(7) Shall not include:
    (A) The business of any carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally; and
    (B) The business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
(8) Shall not include any person who:
    (A) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and
    (B) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public;
(9) Shall not include a telecommunications provider only to the extent determined by the commission pursuant to section 269-16.9; [and]

(10) Shall not include any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and such other purposes that shall be held for public use and purpose[.]; and

(11) Shall not include any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:

(A) The services of the facility shall be provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the State or county which has entered into the service contract;

(B) The primary function of the facility shall be the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility that is owned by a state or county agency;

(C) The facility shall not make sales of water to residential customers;

(D) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subsection, "recycled water" and "reclaimed water" mean treated wastewater that by design is intended or used for a beneficial purpose; and

(E) The facility shall not be engaged, either directly or indirectly, in the processing of food wastes.

In the event the application of this chapter is ordered by the commission in any case provided in paragraphs (5), (6), (9), and (10), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to such terms and conditions as the commission may prescribe, as provided in sections 269-16.9 and 269-20."

SECTION 2. Within twenty days prior to the convening of the regular session of 2004, the city and county of Honolulu department of environmental services shall submit a report to the legislature on:

(1) The volume of recycled or reclaimed water distributed; and

(2) The sale prices of recycled or reclaimed water charged;

by U.S. Filter Operating Services, Inc. at its Ewa wastewater reclamation facility to entities not covered by a state or county service contract.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 256 H.B. NO. 1286

A Bill for an Act Relating to Special Purpose Revenue Bonds for North Hawaii Community Hospital, Inc.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $20,000,000 in one or more series for the purpose of assisting North Hawaii Community Hospital, Inc., in financing, refinancing, or both, of one or more of the following:

(1) Retirement of outstanding debt on North Hawaii Community Hospital, Inc.'s existing health care facilities;
(2) Retirement of outstanding debt and purchase of leases on the existing equipment used in connection with North Hawaii Community Hospital, Inc.'s health care facilities;
(3) Construction of new additions to North Hawaii Community Hospital, Inc.'s existing health care facilities;
(4) Acquisition and installation of additional equipment and other assets for use in connection with North Hawaii Community Hospital, Inc.'s health care facilities; and
(5) Renovation and repair of North Hawaii Community Hospital, Inc.'s existing health care facilities.

The legislature further finds and determines that the activity and facilities of North Hawaii Community Hospital, Inc., constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in any principal amounts that the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2002.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 257 H.B. NO. 1287

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist the Gas Utility Serving the General Public.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act will assist the gas utility in providing utility gas services to the general public and in obtaining lower interest rate bond financing for capital improvement projects through the use of tax exempt special purpose revenue bonds and refunding bonds. Ratepayers pay for capital costs, including the cost of financing, as part of the rates set by the public utilities commission. The savings in interest cost would be reflected in the gas rates established by the public utilities commission in subsequent rate case proceedings. Therefore, the resulting reduction in capital costs will benefit the gas utility ratepayers. Furthermore, these bonds cannot be secured directly or indirectly by the general credit of the counties or the revenues or taxes of the State but rather solely by the gas utility. Thus, the cost of financing necessary capital improvements can be decreased with no cost or risk to the State. For the foregoing reasons, the legislature finds and declares that the issuance under this Act of special purpose revenue bonds and refunding special purpose revenue bonds is in the public interest and for the public health, safety, and general welfare. The legislature further finds that The Gas Company, a division of Citizens Utilities Company, is the gas utility serving the general public that qualifies for special purpose revenue bonds pursuant to chapter 39A, part VI, Hawaii Revised Statutes.

SECTION 2. The department of budget and finance, with approval of the governor, is authorized to issue special purpose revenue bonds in one or more series in a total amount not to exceed $19,600,000 for the following capital improvement programs for the local furnishing of utility gas by The Gas Company, division of Citizens Utilities Company, the gas utility serving the general public: multi-purpose capital improvement program, transmission and distribution lines, and other gas utility facilities and equipment or any combination thereof. The legislature finds that the activities and facilities of The Gas Company constitute a project, and that the financing thereof is assistance to a utility serving the general public in providing gas. The special purpose revenue bonds will be issued during the period from July 1, 1999, through December 31, 2002; provided that approval by the public utilities commission shall be required for any project financed by the issuance of special purpose revenue bonds under this Act.

SECTION 3. The public utilities commission shall report annually to the legislature as to the progress under this Act in reducing financing costs of the gas utility including the cost of the bonds at the time of issue as compared to the cost to the utility if the issue was made on other than the issuance of revenue bonds, the estimated benefits derived from the use of the special purpose revenue bonds, and a listing of the projects to be funded by the special purpose revenue bonds.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to December 31, 2002, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special

purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to chapter 39A, part VI, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds and refunding special purpose revenue bonds to assist utilities serving the general public in providing utility gas.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on December 31, 2002.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 258 H.B. NO. 1361

A Bill for an Act Relating to Charter Tour Operators.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that existing statutory requirements that travel agencies maintain client trust accounts do not provide adequate assurances of compliance with those statutes, and therefore, do not adequately protect consumers against the risk of loss in cases of charter tour operators.

The purpose of this Act is to protect consumers against the risk of loss from advance purchases of charter tours from travel agencies by requiring travel agencies operating charter tours to provide evidence of their financial ability to perform their contractual obligations, and periodic financial reports that demonstrate compliance with client trust account requirements. This Act also provides for greater regulatory supervision of travel agencies operating charter tours by the State, including enhanced authority to conduct audits and examinations.

This Act is intended to affect only travel agencies that directly contract for charter air transportation, with or without related hotel or ground transportation. This Act is not intended to affect other types of travel agencies, such as travel agencies that sell tickets for charter tours operated by separate charter tour operators.

SECTION 2. Section 468L-1, Hawaii Revised Statutes, is amended by adding six new definitions to be appropriately inserted and to read as follows:

"""Charter tour" means any travel services in which a travel agency contracts with an air carrier and offers for sale a charter, with or without related ground transportation or hotel accommodations.

"Charter tour operator" means any person who sells or offers for sale charter tours, whether offered on a wholesale or retail basis, excluding any direct air carrier as defined by Title 14, Code of Federal Regulations, section 380.2, as amended, or any other person to whom the provisions of this chapter do not apply.

"Person" means any sole proprietorship, organization, trust, group, association, partnership, joint venture, corporation, limited liability company, limited

liability partnership, society or other entity, or any combination of any of the foregoing.

"Qualified charter tour client trust assets" means cash or cash equivalents held by a bank or a similar federally-insured financial institution in one or more separate charter tour client trust accounts maintained in compliance with sections 468L-5 and 468L-C. Qualified charter tour client trust assets shall not be commingled with any other accounts, funds, or moneys held by a charter tour operator. Qualified charter tour client trust assets shall not include any of the following:

(1) Any notes receivable;
(2) Federal or state bonds or letters of credit; or
(3) Any other general or administrative expenditure that is not directly related to the payment for travel services.

"Qualified charter tour client trust liabilities" means all cash or cash equivalents received by a charter tour operator for travel services, and shall be accounted for in a charter tour trust liability account on the books and records of the charter tour operator.

"Qualified prepaid charter tour client trust assets" means the following cash expenditures for future travel services made in advance of the commencement of a charter tour advance payments for:

(1) Air transportation;
(2) Hotel accommodations; or
(3) Baggage handling or ground transportation charges."

SECTION 3. Chapter 468L, Hawaii Revised Statutes, is amended by adding nine new sections to be appropriately designated and to read as follows:

"§468L-A Charter tour operator registration as travel agency required. (a) No person shall engage in the business of a charter tour operator unless that person has registered as a travel agency with the director under section 468L-2 and complies with the provisions of this chapter applicable to a travel agency engaged in the business of a charter tour operator.

(b) An application for registration of a charter tour operator as a travel agency or for renewal of a registration of a charter tour operator as a travel agency shall be made on a form provided by the department. In addition to the information required to be provided by all applicants for registration as a travel agency, the form shall require an applicant for registration as a travel agency which intends to engage in the business of a charter tour operator to:

(1) Provide evidence that a charter tour client trust account has been established in accordance with sections 468L-5 and 468L-C;
(2) State whether the applicant intends to operate seven or more charter tours during any twelve months or shorter period of the registration period;
(3) State whether the applicant intends to operate sixteen or more charter tours during any twelve months or shorter period of the registration period; and
(4) Provide evidence that the applicant has complied with the financial performance requirements of section 468L-B.

§468L-B Charter tour operator financial performance requirements. (a) The department shall not approve the initial registration or the renewal of registration of a travel agency that wishes to engage in the business of a charter tour operator and to operate not more than six charter tours during any twelve-month period of the registration period, or during the remainder of the registration period if less than twelve months, for which application is made unless the applicant provides proof

that the applicant has obtained a bond, letter of credit, or other security in compliance with Title 14, Code of Federal Regulation, section 380.34, as the same may be amended, or any successor or replacement federal statute or regulation thereto.

(b) The department shall not approve the initial registration or the renewal of registration of a travel agency that wishes to engage in the business of a charter tour operator and to operate seven or more charter tours during any twelve months or shorter period of the registration period for which application is made unless the applicant either:

(1) Posts a performance or financial guaranty-type bond naming the director as the obligee that may be cancelled only if the charter tour operator gives ninety days' prior written notice to the surety and the surety gives sixty days' prior written notice to the director of cancellation of the bond; or

(2) Obtains an irrevocable letter of credit that is a guarantee of payment for a term of one year naming the director as beneficiary, with a provision for automatic extension for additional annual periods, and that may be cancelled only if the charter tour operator gives prior written notice by certified mail to the director and to the issuer at least ninety days before the letter's expiration date or the date on which the charter tour operator intends the letter to cease being effective, or the issuer gives prior written notice by certified mail to the director at least sixty days before the expiration date.

(c) The bond or letter of credit shall be issued by a surety or federally-insured lending institution authorized to do business in the State to indemnify any consumer who may suffer loss as a result of nonperformance by a charter tour operator.

(d) A charter tour operator shall not provide the required coverage through multiple bonds or irrevocable letters of credit but shall provide either a single bond or a single irrevocable letter of credit. A charter tour operator may substitute the bond with an irrevocable letter of credit and vice versa pursuant to subsection (h), but shall not provide one in addition to the other to reach the required aggregate amount of coverage.

(e) Upon cancellation or expiration of the bond or letter of credit, the surety or insurer shall remain liable for any claims against the bond or letter of credit for a period of six months; provided that:

(1) The debts were incurred while the bond or letter of credit was in effect; and

(2) The director notifies the surety or insurer, as the case may be, of any claims within ninety days of discovery of any claims.

(f) The surety or insurer shall not be required to release any moneys or collateral to the charter tour operator during the six months after cancellation of the bond or expiration of the letter of credit.

(g) The amount of coverage of the bond or irrevocable letter of credit shall be:

(1) Equal to $300,000, less the amount of any security provided by the applicant under Title 14, Code of Federal Regulations, section 380.34, as the same may be amended, or any successor or replacement federal statute or regulation thereto, for a travel agency planning to engage in the business of a charter tour operator and to operate seven to fifteen charter tours during any twelve months or shorter period of the registration period for which application is made; or

(2) Equal to $1,000,000, less the amount of any security provided by the applicant under Title 14, Code of Federal Regulations, section 380.34, as the same may be amended, or any successor or replacement federal statute or regulation thereto, for a travel agency planning to engage in

the business of a charter tour operator and to operate more than fifteen charter tours during any twelve months or shorter period of the registration period for which application is made.

(h) A bond shall be accepted as replacement for another bond or an irrevocable letter of credit and an irrevocable letter of credit shall be accepted as replacement for another irrevocable letter of credit or a bond if:

(1) The effective date of a replacement bond is prior to or on the cancellation date of the bond being replaced or the expiration date of the irrevocable letter of credit being replaced, as the case may be, and the replacement bond is received by the director before the cancellation date or the expiration date, as the case may be; or

(2) The replacement irrevocable letter of credit is received by the director at least fifteen days prior to the expiration date of the irrevocable letter of credit being replaced or is received by the director on or before the cancellation date of the bond being replaced, as the case may be.

(i) A charter tour operator shall not operate more than six charter tours during any twelve-month period unless the charter tour operator has provided and maintains in effect a bond or letter of credit in accordance with subsection (b), in the amount specified in subsection (g)(1), if the charter tour operator operates between seven and fifteen charter tours, or in the amount specified in subsection (g)(2), if the charter tour operator operates more than fifteen charter tours.

§468L-C Charter tour client trust account. Every travel agency engaged in the business of a charter tour operator shall establish and maintain a separate charter tour client trust account solely for the purpose of the travel agency's charter tour business. The charter tour client trust account shall be maintained in accordance with sections 468L-5 and 468L-D.

§468L-D Maintenance of charter tour operator accounts. (a) Every charter tour operator shall maintain adequate books and records that provide for a proper accounting of total qualified charter tour client trust assets and qualified charter tour client trust liabilities for all charter tours for which funds have been accepted.

(b) Every charter tour operator shall maintain in its books and records a charter tour trust liability account for the purpose of accounting for qualified charter tour client trust liabilities.

(c) The charter tour trust liability account shall only be adjusted in the following manner:

(1) The charter tour trust liability account shall be reduced by the amount of actual payments made by the charter tour operator for air transportation, hotel accommodations, baggage handling, or ground transportation charges with respect to the charter tour operator's current obligations to provide travel services or to past travel services provided by the charter tour operator; provided that the charter tour trust liability account shall not be reduced for any expenditure which constitutes a qualified pre-paid charter tour client trust asset;

(2) The charter tour trust liability account shall be reduced by the amount of payments made by the charter tour operator of federal transportation taxes that are payable as a result of a charter tour and for commissions payable to third party travel agents; and

(3) Only after:

(A) All of the liabilities described in paragraphs (1) and (2) with respect to a specific charter tour have been satisfied through payment;

(B) The obligation to provide travel services has been fully provided; and

(C) The travel has been completed;

then and only then, may any funds remaining in the charter tour client trust account relating to the specific charter tour be withdrawn from the charter tour client trust account and deposited into the general accounts of the charter tour operator, and the charter tour trust liability account shall be reduced by the amount so withdrawn from the charter tour client trust account.

§468L-E Maintenance of qualified charter tour client trust assets by charter tour operators. A charter tour operator shall regularly maintain qualified charter tour client trust assets in an amount which is equal to or exceeds the qualified charter tour client trust liabilities of the charter tour operator. A charter tour operator shall be deemed to be in substantial compliance with the provisions of this section even if, during any twelve month period, qualified charter tour client trust liabilities exceed qualified charter tour client trust assets for any one, but not more than one, quarterly reporting period applicable under section 468L-F; provided that qualified charter tour client trust assets at all times shall be equal to or exceed not less than ninety per cent of qualified charter tour client trust liabilities.

§468L-F Quarterly report filing requirements for charter tour operators. Not later than forty-five days after the end of each quarter, each registered travel agency engaging in the business of a charter tour operator, at its own expense, shall file a quarterly report that shall cover the immediately preceding quarter. Each report shall include a statement by an independent certified public accountant that the charter tour client trust account has been maintained in accordance with the requirements of sections 468L-5, 468L-C, and 468L-D, or specifying the grounds on which such a statement cannot be made.

§468L-G Failure by charter tour operator to file required reports; lack of compliance by charter tour operators; remedies. (a) Any registered travel agency engaged in the business of a charter tour operator which fails to file any report required to be filed under this chapter or which files a report indicating that the charter tour operator is not in compliance with the provisions of this chapter, including without limitation, any report which indicates that the charter tour client trust account is not in compliance with the requirements of this chapter, shall be deemed not to be in substantial compliance with the requirements of this chapter.

(b) In addition to any other remedy available, the director may cause a citation to be issued with respect to a registered travel agency engaged in the business of a charter tour operator that has not acted or is not acting in compliance with any provision of this chapter.

(c) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provision alleged to have been violated and may contain an order of abatement directing the travel agency to cease engaging in the business of a charter tour operator and an assessment of administrative fines as provided by this section. All fines collected under this section shall be deposited in the special fund established under section 26-9(o).

(d) Any registered travel agency engaged in the business of a charter tour operator who violates this section shall be assessed an administrative fine of up to:

(1) $25,000 for the first violation;

(2) $50,000 for the second violation; and

(3) $75,000 for any subsequent violations.

(e) Service of a citation issued under this section shall be made by personal service or by certified mail, restricted delivery, sent to the last known business address of the travel agency.

(f) Any person issued a citation under this section may submit a written request, within twenty days from the service of the citation, to the director for a hearing with respect to the violations alleged, the scope of the order of abatement, or the amount of the administrative fine assessed.

(g) If the person issued a citation under this section timely notifies the director of a request for a hearing, the director shall afford an opportunity for a hearing under chapter 91.

(h) If the person issued a citation under this section does not submit a written request to the director for a hearing within twenty days from the service of the citation, the citation shall be transmitted to the director for issuance of a final order.

(i) The sanctions and disposition authorized under this section shall be separate and in addition to all other remedies provided by law.

(j) The director may adopt rules pursuant to chapter 91 necessary for the purpose of this section.

§468L-H Audit of charter tour operators. (a) The department may audit the records of any charter tour operator with respect to its funds. For that purpose, the department shall have free access to the office and places of business of the charter tour operator. Notwithstanding section 468L-3(6), the department may contract with a private consultant to audit the records of any charter tour operator, the cost of which shall be borne by the charter tour operator regardless of whether a violation of this chapter is established.

(b) The director, upon notice and hearing pursuant to chapter 91, may temporarily suspend or may revoke the registration as a travel agency of any charter tour operator who fails to cooperate with the department in any examination or audit of the charter tour operator conducted or contracted for by the director.

§468L-I Violation of charter tour operator provisions. Without limitation to any other remedies or penalties that may be applicable, any person who knowingly accepts moneys for charter tours without being registered as a travel agency in compliance with this chapter, or any charter tour operator that knowingly is not in compliance with the provisions of this chapter and continues to accept moneys for charter tours, shall be guilty of a misdemeanor."

SECTION 4. Section 468L-1, Hawaii Revised Statutes, is amended by amending the definition of "travel agency" to read as follows:

"""Travel agency" means any [sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which] person who for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services."

SECTION 5. In codifying the new sections added to chapter 468L, Hawaii Revised Statutes, by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated in this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect on October 1, 1999.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 259 H.B. NO. 1401

A Bill for an Act Relating to Motor Vehicle Towing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 290-11, Hawaii Revised Statutes, is amended to read as follows:

"**§290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles.** (a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall state where the vehicle will be towed and held. The notice shall be of such size and be placed in a location reasonably calculated to call the sign to the attention of potential parkers.

(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall [charge]:

(1) Have permanently affixed on each door of the towing vehicle a sign with the name and telephone number of the towing business. The letters and numbers used in the sign shall be no less than two inches in height;

(2) Maintain insurance coverage sufficient to protect owners of towed vehicles in the event of vehicle loss or damage due to towing;

(3) Charge not more than $50 for a tow, or $60 for a tow using a dolly, plus a mileage charge of $5 per mile towed and $15 per day or fraction thereof for storage for the first seven days and $10 per day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., the towing company shall be entitled to an overtime charge of $15. If the vehicle is in the process of being hooked up to the tow truck and the owner appears on the scene before the vehicle has been moved by the tow truck, the towing company shall be entitled to an "unhooking" fee of not more than $50. In the case of a difficult hookup, meaning an above or below ground hookup in a multilevel facility, a towing surcharge of $25 shall be applicable[. The towing company shall determine];

(4) Determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:

[(1)] (A) The maximum towing charges and fees allowed by law;

[(2)] (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and

[(3)] (C) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Where the owners have not been so notified, then the owner may recover the owner's car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of the damages and reasonable attorney's fees together with the cost of suit.

If a tow operator fails to comply with the insurance requirements of this section, no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lienholder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is for the plaintiff, the court shall award the plaintiff a sum of not less than $1,000 or threefold damages sustained by the plaintiff, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit;

[(c) When]

(5) Provide, when a vehicle is recovered by the owner before written notice is sent by registered or certified mail, [the towing company shall provide] the owner with a receipt stating:

[(1)] (A) The maximum towing charges and fees allowed by law; and

[(2)] (B) The telephone number of the consumer information service of the department of commerce and consumer affairs[.]; and

(6) Accommodate payment by the owner for charges under paragraph (3) by cash and by either credit card or automated teller machine located on the premises.

[(d)] (c) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vehicle or dispose of it as junk.

[(e)] (d) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller for services rendered in respect to the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the legal or registered owner of the vehicle if the legal or registered owner can be found. If the legal or registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the legal or registered owner of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. If no claim is made within the year allowed, the money shall become a state realization.

[(f)] (e) The transfer of title and interest by sale under this part is a transfer by operation of law; provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

[(g)] (f) Each county by ordinance may enact additional restrictions to this section or may enact criminal sanctions in this area as required.

[(h) For the purposes of this section, tow operators shall accommodate payment by the owner for charges under subsection (b) by cash and by either credit card or automated teller machine located on the premises.]''

SECTION 2. Section 291C-165.5(b), Hawaii Revised Statutes, is amended to read as follows:

''(b) The towing company shall determine the name of the lien holder and the registered owner of the vehicle from the department of transportation or the county department of finance. The lien holder and the registered owner shall be notified by the towing company in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:

(1) The maximum towing charges and fees allowed by law;
(2) The telephone number of the county finance department that arranged for or authorized the tow; and
(3) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Any towing company engaged in towing pursuant to this section shall comply with the requirements of section 290-11(b)(1) and (2). When the vehicle is recovered after the tow by the registered owner or lien holder, the party recovering the vehicle shall pay the tow and storage charges which shall not exceed the charges as provided by section 290-11(b) or the rates agreed upon with the respective counties, whichever is lower, except that tow operators may charge additional reasonable amounts for excavating vehicles from off-road locations; provided that if the notice required by this section was not sent within twenty days after the tow, neither the registered owner nor the lien holder shall be required to pay the tow and storage charges. No notice shall be sent to a legal or registered owner or any person with any unrecorded interest in the vehicle whose name or address cannot be determined. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained, and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of these damages and reasonable attorney's fees together with the cost of the suit.

If a tow operator fails to comply with the insurance requirements of section 290-11(b), no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lienholder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is for the plaintiff, the court shall award the plaintiff a sum of not less than $1,000 or threefold damages sustained by the plaintiff, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit.''

SECTION 3. Act 138, Session Laws of Hawaii 1998, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall take effect upon its approval; provided that the amendment set forth in Section 1 shall take effect on September 1, 1998[, and shall be repealed on July 1, 2000]."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 260 H.B. NO. 1409

A Bill for an Act Relating to the Land Use Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 205-4.1, Hawaii Revised Statutes, is amended to read as follows:

"**[ ]§205-4.1[ ] Fees.** The commission may establish reasonable fees for the filing of boundary amendment petitions and petitions for intervention to cover the cost of processing thereof and for the reproduction of maps and documents. The commission also may assess a reasonable fee or require reimbursements to be made for court reporter expenses, the inexcusable absence of a party from a boundary amendment proceeding[.], and any other reimbursements for hearing expenses as determined by the commission. Any fees collected shall be deposited to the credit of the general fund."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 261 S.B. NO. 676

A Bill for an Act Relating to Commercial Driver's Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that motor vehicle configurations and manufacturing have improved and heavier motor vehicles are designed to more safely carry the loads being demanded of them.

The purpose of this Act is to permit the holder of a Type 3 driver's license to drive a motor vehicle with a gross vehicle weight rating of up to 15,000 pounds, although currently limited to 11,000 pounds, and the holder of a Type 4 license to

drive a motor vehicle with a gross vehicle weight rating of 15,001 to 26,000 pounds, although currently 11,001 to 26,000 pounds.

SECTION 2. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

(1) Motor scooters;
(2) Motorcycles and motor scooters;
(3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of [eleven] fifteen thousand pounds or less; and
(4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of [eleven] fifteen thousand one through twenty-six thousand pounds.

A school bus or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 262 S.B. NO. 700

A Bill for an Act Relating to Low-Speed Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to enact laws regarding the use of a low-speed motor vehicle known as the "neighborhood electric vehicle".

A neighborhood electric vehicle is a small, enclosed, one or two passenger vehicle powered by rechargeable batteries and an electric motor. It is designed to be used in a city environment to run errands, commute to and from work or school, and to make small, local deliveries. Neighborhood electric vehicles are intended to be a lower cost, environmentally friendly alternative to larger gasoline automobiles and traditional utility vehicles. Transportation studies have demonstrated that the vast majority of vehicular trips within cities are short requiring nothing larger or more expensive than a neighborhood electric vehicle. They make sense because they are designed for the most common type of vehicle trip.

Neighborhood electric vehicles are small because, for most city trips, a small vehicle minimizes traffic and parking problems. They are enclosed so they can be used in windy, rainy weather. Neighborhood electric vehicles are electric for several

good reasons: electric motors do not create air pollution, they have powerful performance characteristics at low rpm, and they can re-charge from any 110 volt outlet. Neighborhood electric vehicles typically carry one person because most car trips in cities are made by only one person, and the vast majority of trips within cities are of a short distance (less than ten miles).

Cities around the world are literally being choked by air pollution and traffic congestion. In many urban and suburban settings, it is not healthy to go for a walk or ride a bike. In many cases, city dwellers need a vehicle to get to work, to school, shopping, or visit the doctor. Modern cities have been designed to accommodate the widespread use of automobiles, which has resulted in monumental social and environmental problems.

The solution is to use cleaner vehicles that do not pollute city air, to use small vehicles that are appropriate for local urban use, and to begin to change the design of cities so that fewer and shorter trips are needed to enjoy a pleasant lifestyle. Neighborhood electric vehicles can address these three solutions. Neighborhood electric vehicles are designed to minimize the social and environmental costs of urban transportation while providing people with an independent and low cost way of getting around town.

Transportation studies have repeatedly shown that seventy-five per cent of all travel in the United States is one person in a car going less than twenty-five miles in a day. This type of vehicular use is a very inefficient use of petroleum. Short trips cause the most pollution and the most wear and tear on the engine. Electric vehicles are much more appropriate for this type of travel, being efficient, non-polluting, and having minimal impact. Many people travel primarily in a local area, at about thirty miles an hour. If they would use a small, economical, environmentally friendly vehicle for those trips, they would save money, help the environment, reduce the need for more and wider streets, more parking lots, and garages. In addition, their gas vehicles would be used for more appropriate uses that are easier on their engines, the vehicles would last longer, and their mileage would stay low so the resale value would be higher.

The National Highway Traffic Safety Administration, responding to a growing public interest in using small four-wheeled passenger vehicles to make short trips within retirement and other planned communities, issued Federal Motor Vehicle Safety Standard No. 500, Low-Speed Vehicles (49 C.F.R. 571.500), effective June 17, 1998. That standard requires the use of basic safety equipment, including headlamps, front and rear turn signal lamps, taillamps, stop lamps, reflectors, mirrors, a parking brake, windshields and wipers, and seat belts, on "low-speed vehicles", defined as a four-wheeled motor vehicle, other than a truck, whose maximum speed is between twenty and twenty-five miles per hour. The principal vehicle in this class is the neighborhood electric vehicle. While the rule does not apply to golf carts, because their speed as manufactured is less than twenty miles per hour, if any golf cart is modified on and after June 17, 1998, so that its maximum speed is over twenty miles per hour, it must also conform to Standard No. 500.

The purpose of this Act is to regulate neighborhood electric vehicles in order to provide for an economical, alternative form of transportation, as well as to improve air quality and traffic safety and to reduce traffic congestion.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to section 286-2 to be appropriately inserted and to read:

"<u>"Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:</u>

<u>(1) The vehicle is emission free;</u>

<u>(2) The vehicle is designed to carry four or fewer persons;</u>

(3) The vehicle is designed to be and is operated at speeds of twenty-five miles per hour or less;
(4) The vehicle has at least four wheels in contact with the ground;
(5) The vehicle has an unladen weight of less than one thousand eight hundred pounds; and
(6) The vehicle conforms to the minimum safety equipment requirements as adopted in the Federal Motor Vehicle Safety Standard No. 500, Low Speed Vehicles (49 C.F.R. 571.500).''

2. By amending subsection (b) of section 286-41 to read:

''(b) Application for the registration of a vehicle shall be made upon the appropriate form furnished by the director of finance and shall contain the name, occupation, and address of the owner and legal owner; and, if the applicant is a member of the United States naval or military forces, the applicant shall give the organization and station. All applications shall also contain a description of the vehicle, including the name of the maker, the type of fuel for the use of which it is adapted (e.g., gasoline, diesel oil, liquefied petroleum gas), the serial or motor number, and the date first sold by the manufacturer or dealer, and such further description of the vehicle as is called for in the form, and such other information as may be required by the director of finance, to establish legal ownership. A person applying for initial registration of a neighborhood electric vehicle shall certify in writing that a notice of the operational restrictions applying to the vehicle as provided in section 291C- are contained on a permanent notice attached to or painted on the vehicle in a location that is in clear view of the driver.''

SECTION 3. Chapter 291C, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read:

''§291C- Neighborhood electric vehicles; speed; restrictions. (a) A neighborhood electric vehicle shall not be operated at a speed of more than twenty-five miles per hour.

(b) A neighborhood electric vehicle shall not be driven on a highway that has a posted speed limit of more than thirty-five miles per hour. This subsection does not prohibit a neighborhood electric vehicle from crossing a highway that has a posted speed limit of more than thirty-five miles per hour at an intersection.

(c) A neighborhood electric vehicle shall have a notice of the operational restrictions applying to the vehicle permanently attached to or painted on the vehicle in a location that is in clear view of the driver.''

2. By adding a new definition to section 291C-1 to be appropriately inserted and to read:

'''Neighborhood electric vehicle'' means a self-propelled electrically powered motor vehicle to which all of the following apply:
(1) The vehicle is emission free;
(2) The vehicle is designed to carry four or fewer persons;
(3) The vehicle is designed to be and is operated at speeds of twenty-five miles per hour or less;
(4) The vehicle has at least four wheels in contact with the ground;
(5) The vehicle has an unladen weight of less than one thousand eight hundred pounds; and
(6) The vehicle conforms to the minimum safety equipment requirements as adopted in the Federal Motor Vehicle Safety Standard No. 500, Low Speed Vehicles (49 C.F.R. 571.500).''

3. By amending subsection (a) of section 291C-53 to read:

''(a) The director of transportation by rules adopted in accordance with chapter 91, and the counties by ordinance, may regulate or prohibit the use of any

controlled-access roadway or highway within their respective jurisdictions by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. Persons operating motorcycles which are otherwise permitted on a controlled-access roadway or highway shall be permitted to use any high occupancy vehicle lane designated on such roadway or highway. For the purposes of this subsection, "high occupancy vehicle lane" means a designated lane of a laned roadway where the use of such designated lane is restricted to vehicles carrying at least two persons and to other vehicles as provided by rules adopted in accordance with chapter 91, or by county ordinance. Notwithstanding any law to the contrary, no person shall operate a neighborhood electric vehicle on any controlled-access roadway or highway."

4. By amending subsection (a) of section 291C-130 to read:

"(a) Any vehicle, or combination of vehicles, designed to operate at a speed of twenty-five miles per hour or less, including a neighborhood electric vehicle, and traveling on a public highway, [shall,] except when guarded by a flagperson or a flare, or unless provided by ordinance, shall display a triangular slow moving vehicle emblem meeting ASAE Standard S276.2 as developed by the American Society of Agricultural Engineers, mounted on the rear of the vehicle, or combination of vehicles, base down and at a height of not less than three nor more than five feet from the ground to base."

SECTION 4. The director of transportation shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, as may be necessary to regulate the use of neighborhood electric vehicles.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 263 S.B. NO. 709

A Bill for an Act Relating to Traffic Enforcement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to reduce traffic congestion on Hawaii's roads through the stricter enforcement of traffic control laws.

In 1998, a three-year demonstration project was established that used new photo technologies to catch drivers who run red lights or exceed the posted speed limit on Hawaii's roads. In particular, Act 234, Session Laws of Hawaii 1998, established the photo red light imaging and photo speed imaging detector demonstration project, which allows for the testing of these technologies by private

contractors and, among other things, for the mailing of citations to violators rather than requiring the citation to be physically given to the violator.

The purpose of this Act is to amend Act 234 to allow for the use of other photo technologies, such as hand-held or mounted video cameras, conventional cameras, and digital cameras, other than photo speed imaging detectors and photo red light imaging devices, to produce photographic identification of vehicles that illegally cross longitudinal traffic lane markings. In addition, this Act amends the demonstration project to close a loop hole with respect to registered owners of vehicles who are not the operators of the vehicle at the time of the alleged violation. Finally, this Act amends the traffic code to allow for the mailing of traffic citations to violators on access control roads to provide for greater enforcement of the traffic laws, reduce the potential for accidents, and speed up traffic flow.

PART I

SECTION 2. Section 286-45, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any private contractor that has entered into a contract with a county to implement the [photo red light imaging and photo speed imaging detector] traffic enforcement demonstration project pursuant to [ ]section 5 et seq. of[ ] Act 234, Session Laws of Hawaii 1998, may obtain from the county finance director the names and addresses of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed."

SECTION 3. Section 286-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Subject to authorization granted by the chief justice with respect to the traffic records of the violations bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

(1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;

(2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports;

(3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles; or

(4) Any request from a private contractor that has entered into a contract with a county as may be necessary to implement the [photo red light imaging and photo speed imaging detector] traffic enforcement demonstration project pursuant to [ ]section 5 et seq. of[ ] Act 234, Session Laws of Hawaii 1998. The private contractor may obtain from the director of transportation the names and addresses of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed."

SECTION 4. Section 291C-38, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Longitudinal traffic lane markings shall have the following applications:

(1) A broken white line is used to indicate the edge of the traffic lane where travel is permitted in the same direction on both sides of the line and may be crossed by vehicular traffic when the crossing can be made with safety.

(2) A broken yellow line is used to indicate the left edge of a traffic lane where traffic on the other side of the line moves in the opposite direction and may be crossed by vehicular traffic only when overtaking or passing a vehicle proceeding in the same direction or when executing a left turn and then only if the movement can be made with safety and does not interfere with traffic moving in the opposite direction.

(3) A solid white line is used to indicate the edge of the traffic lane where travel in the same direction is permitted on both sides of the line but where movement from lane to lane is considered to be hazardous. A solid white line may be crossed only in unusual circumstances and then only with great care. A double width solid white line is used to emphasize a greater degree of hazard.

(4) A solid white line is also used to indicate the right edge of the pavement.

(5) A double solid white line is used to indicate the edges of traffic lanes where travel in the same direction is permitted on both sides of the double line but where movement from lane to lane is considered to be dangerous. The crossing of a double solid white line by vehicular traffic is prohibited.

(6) A solid yellow line is used to indicate the left edge of a traffic lane where overtaking and passing on the left is prohibited. The crossing of a solid yellow line by vehicular traffic is prohibited except when the crossing is part of a left turn movement.

(7) A solid yellow line is also used to indicate the left edge of each roadway of a divided street or highway.

(8) A double solid yellow line is used to indicate the separation between lanes of traffic moving in opposite directions. The crossing of a double solid yellow line by vehicular traffic is prohibited except when the crossing is part of a left turn movement.

(9) A double line consisting of a broken yellow line and a solid yellow line is used to indicate a separation between lanes of traffic moving in opposite directions and vehicular traffic adjacent to the broken line is permitted to overtake or pass if the movement can be made with safety and does not interfere with traffic moving in the opposite direction. The crossing of this double line by vehicular traffic adjacent to the solid line is prohibited except when the crossing is part of a left turn movement.

(10) A double broken yellow line is used to indicate the edge of a reversible traffic lane where the direction of the vehicular traffic may be changed from time to time.

(11) A dotted line is used to indicate the extension of a line through an intersection or interchange. It shall be the same color as the line it extends. [The] Unless authorized by a traffic-control device or a traffic or police officer under section 291C-31, the crossing of a dotted line by vehicular traffic is subject to the same prohibitions and exceptions as are applicable to the line it extends.

(12) A solid white line when supplemented by official signs or pavement markings, is used to indicate the separation of bicycle lanes from lanes

of vehicular traffic flowing in the same direction. Except as allowed under section 291C-123, vehicles other than bicycles shall be prohibited from operating in a bicycle lane."

SECTION 5. Section 291C-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not be deemed to prevent counties with respect to streets and highways under their jurisdiction from:

(1) Regulating or prohibiting stopping, standing, or parking except as provided in section 291C-111;
(2) Regulating traffic by means of police officers or official traffic-control devices;
(3) Regulating or prohibiting processions or assemblages on the highways;
(4) Designating particular highways or roadways for use by traffic moving in one direction;
(5) Establishing speed limits for vehicles in public parks;
(6) Designating any highway as a through highway or designating any intersection as a stop or yield intersection;
(7) Restricting the use of highways;
(8) Regulating the operation and equipment of and requiring the registration and inspection of bicycles, including the requirement of a registration fee;
(9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;
(10) Altering or establishing speed limits;
(11) Requiring written accident reports;
(12) Designating no-passing zones;
(13) Prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic;
(14) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
(15) Establishing minimum speed limits;
(16) Designating hazardous railroad grade crossing;
(17) Designating and regulating traffic on play streets;
(18) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk;
(19) Restricting pedestrian crossing at unmarked crosswalks;
(20) Regulating persons propelling push carts;
(21) Regulating persons upon skates, coasters, sleds, and other toy vehicles;
(22) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions;
(23) Adopting maximum and minimum speed limits on streets and highways within their respective jurisdictions;
(24) Adopting requirements on stopping, standing, and parking on streets and highways within their respective jurisdictions except as provided in section 291C-111;
(25) Entering into an agreement with any private contractor to implement the [photo red light imaging and photo speed imaging detector] traffic enforcement demonstration project pursuant to [[]section 5 et seq. of[]] Act 234, Session Laws of Hawaii 1998; or
(26) Adopting such other traffic regulations as are specifically authorized by this chapter."

SECTION 6. Section 291C-165, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In every case when a citation is issued, the original of the citation shall be given to the violator[, or in]; provided that:

(1) In the case of an unattended vehicle, the original of the citation shall be affixed to the vehicle as provided for in section 291C-167[, or in]; or

(2) In the case of [a]:

(A) A vehicle utilizing the high occupancy vehicle lane illegally[,]; or

(B) A traffic or other violation on a controlled access facility that is recorded through the use of a hand-held or mounted video camera, conventional camera, or digital camera that produces photographic identification of a vehicle,

the original of the citation shall be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division as provided in section 291C-223. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday; provided that the administrative judge of the district courts may allow a carbon copy of the citation to be given to the violator or affixed to the vehicle and provide for the disposition of the original and any other copies of the citation."

PART II

SECTION 7. Act 234, Session Laws of Hawaii 1998, is amended as follows:

1. By adding a new section 1A to read:

"SECTION 1A. The legislature finds that there is a need to reduce traffic congestion during rush hour, particularly on controlled access facilities such as the H-1 freeway on Oahu.

In some instances, vehicles that illegally cross certain longitudinal traffic lane markings create hazardous driving situations that slow down traffic, thereby adding to rush hour congestion. Current law, however, requires police officers in these instances to pull over violators and hand them a ticket. Requiring police officers to pull vehicles over is both counterproductive — it simply increases traffic congestion as motorists rubberneck to see why someone was being pulled over — as well as extremely dangerous on the freeway. The legislature therefore finds that in situations involving illegal crossing of longitudinal traffic lane markings, conventional enforcement methods are dangerous and delay law-abiding drivers. However, in these situations existing law does not allow for citations to be mailed to violators.

In other instances, the existing design of the H-1 freeway is inadequate to handle the large volume of traffic during rush hour. These situations can be corrected in some instances by the use of signs, traffic cones, and other traffic control devices to route vehicles in a manner that tends to reduce traffic congestion. For example, the state department of transportation has used traffic control devices to prohibit vehicles from crossing over certain lanes on the H-1 freeway at the Lunalilo Street on-ramp as an experiment to see how traffic flows on H-1 if cars are prohibited from merging into the H-1 traffic at that on-ramp. While the department found that the traffic control devices significantly improved the flow of traffic, which could speed up the morning and afternoon commute into downtown Honolulu, there are two potential problems with this approach.

The first problem is that existing law needs to be changed to allow for the police or traffic control devices to direct motorists not to cross the dotted lines on certain lanes during specified hours. Second, in trial runs, many drivers simply ignored cones or posted signs and crossed over into the prohibited lanes anyway. In order to effectively change these motorists' driving behavior, a further change in the law is necessary to allow for traffic enforcement through video surveillance that would allow for the mailing of traffic citations rather than requiring officers to pull motorists over in traffic to hand them a ticket.

The legislature finds that hand-held or mounted video cameras, conventional cameras, or digital cameras, can be used to produce photographic identification of vehicles that illegally cross longitudinal traffic lane markings. These photo systems could be operated by police officers or could be contracted out to a private contractor."

2. By amending section 5 by adding a new definition to be appropriately inserted and to read:

"'"Photo technology system" means hand-held or mounted video cameras, conventional cameras, or digital cameras, other than photo speed imaging detectors or photo red light imaging devices, that are used to improve traffic enforcement and reduce traffic congestion by producing photographic identification of a vehicle which crosses longitudinal traffic lane markings in violation of section 291C-38(c)."

3. By amending section 6 to read:

"SECTION 6. **[Photo red light imaging and photo speed imaging detector] Traffic enforcement demonstration project.** (a) Subject to this Act, each county may establish a three-year demonstration project in selected areas of that county to provide for the implementation of photo red light imaging, [and] photo speed imaging detector, or photo technology systems to improve traffic enforcement as provided in this Act. The demonstration project shall be limited to state or county highways and shall document the effectiveness of these systems. The contractor shall provide a public information campaign to inform local drivers about the use of [the photo red light imaging and photo speed imaging detector] these systems before any citation or summons is actually issued.

(b) Notwithstanding any other law to the contrary, the demonstration project may include the use of photo technology systems in addition to photo red light imaging or photo speed imaging detector systems, including hand-held or mounted video cameras, conventional cameras, or digital cameras to improve traffic enforcement and reduce traffic congestion, particularly on controlled access facilities on Oahu. These photo technology systems:

(1) May be operated by either private contractors or county police department personnel at the election of the police chief of each county;

(2) Shall be used only to produce photographic identification of vehicles which are operated in violation of section 291C-38(c), Hawaii Revised Statutes, regarding longitudinal traffic lane markings."

4. By adding a new section 8A to read:

"SECTION 8A. **Photo technology systems.** (a) Subject to this Act, each county may establish photo technology systems imposing monetary liability on the registered owner of a motor vehicle for failure to comply with section 291C-38(c), Hawaii Revised Statutes, regarding longitudinal traffic lane markings, in accordance with this Act. Each county may provide for the installation and operation of photo technology systems on no more than twenty-five state or county highways at any one time in any county; provided that these systems shall primarily be used on controlled access facilities on Oahu.

(b) Proof of a violation of section 291C-38(c), Hawaii Revised Statutes, shall be evidenced by information obtained from the photo technology systems authorized pursuant to this Act. A certificate, sworn to or affirmed by the contractor or the contractor's agent or employee, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by the system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images, including digitally produced images, evidencing a violation shall be available for inspection in any proceeding to adjudicate the liability for that violation.

(c) A contractor may issue a citation or summons pursuant to section 10 of this Act on the basis of a photo technology system if the following conditions are met:

(1) The photo technology system is operated by a uniformed police officer or a contractor who is authorized to operate that system pursuant to this Act;

(2) Signs indicating that a photo technology system is in use are posted on all major routes entering the area in question, as far as practicable, providing notice to a motorist that such a system may be used; and

(3) The photo technology system is used for no more than four hours per day in any one location.

The conditions specified in this subsection shall not apply when the information gathered is used for highway safety research or to issue warning citations not involving a fine, court appearance, or a person's driving record."

5. By amending subsection (a) of section 9 to read:

"(a) Each county shall designate locations on state or county highways in that county that are appropriate for the installation of:

(1) Photo red light imaging or photo technology systems, with the assistance of the director; and

(2) Photo speed imaging detector systems, without the assistance of the director."

6. By amending subsection (a) of section 10 to read:

"(a) Notwithstanding any law to the contrary, whenever any motor vehicle is determined by means of:

(1) The photo red light imaging system to have disregarded a steady red signal in violation of section 291C-32(a)(3), Hawaii Revised Statutes; [or]

(2) The photo speed imaging detector system to be in excess of the legal speed limit in violation of section 291C-102, Hawaii Revised Statutes[,]; or

(3) The photo technology system to have crossed longitudinal traffic lane markings in violation of section 291C-38(c), Hawaii Revised Statutes,

the contractor shall cause a summons or citation as described in this section to be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday."

7. By amending section 11 to read:

"SECTION 11. **Registered owner's responsibility for a summons or citation.** In any proceeding for a violation of this Act, the information contained in the summons or citation mailed in accordance with section 291C-165(b), Hawaii Revised Statutes, or section 10 of this Act shall be deemed evidence that the

registered vehicle violated section 291C-32(a)(3), 291C-38(c), or 291C-102, Hawaii Revised Statutes."

8. By amending section 12 to read:

"SECTION 12. **Prima facie evidence.** (a) Whenever [the] a citation for violation of chapter 291C, Hawaii Revised Statutes, is issued pursuant to section 291C-165, Hawaii Revised Statutes, or whenever a photo red light imaging system, photo technology system, or [the] photo speed imaging detector system determines a motor vehicle to be in violation of section 291C-102, 291C-38(c), or 291C-32(a)(3), Hawaii Revised Statutes, as applicable, evidence that the motor vehicle described in the citations or summons issued pursuant to this Act was operated in violation of those sections of the Hawaii Revised Statutes, together with proof that the person to whom the summons or citation was sent was the registered owner of the motor vehicle at the time of the violation, shall constitute prima facie evidence that the registered owner of the motor vehicle was the person who committed the violation.

(b) The registered owner of the vehicle may rebut the prima facie evidence in subsection (a) by:

(1) Submitting a written statement as provided in section 291D-6(b)(2), Hawaii Revised Statutes; provided that, if the registered owner alleges that another person was operating the vehicle at the time of the alleged violation, then the registered owner shall submit a declaration under penalty of perjury signed by both the registered owner and the vehicle operator. The declaration shall state the name, current address, and driver's license number of the vehicle operator at the time of the alleged violation along with the date, time, place, and nature of the alleged violation. Within forty-eight hours of receiving this information contained in the declaration, the contractor or the appropriate county police department shall cause a summons or citation to be mailed to the operator as provided in section 291C-165, Hawaii Revised Statutes, or section 10 of this Act;

(2) Testifying in open court under oath that the [person] registered owner was not the operator of the vehicle at the time of the alleged violation[; or], in which case the registered owner shall submit to the court a declaration under penalty of perjury signed by both the registered owner and the vehicle operator. The declaration shall state the name, current address, and driver's license number of the vehicle operator at the time of the alleged violation along with the date, time, place, and nature of the alleged violation. Within forty-eight hours of receiving this information, the contractor or the appropriate county police department shall cause a summons or citation to be mailed to the operator as provided in section 291C-165, Hawaii Revised Statutes, or section 10 of this Act;

(3) Presenting, prior to the return date established on the citation or summons issued pursuant to this Act, a letter of verification of loss from the police department to the court adjudicating the alleged violation[.]; or

(4) Submitting an affidavit, prior to the return date established on the citations or summons issued pursuant to this Act, that the vehicle in question was a rental or U-drive vehicle subject to section 14 of this Act."

9. By amending section 15 to read:

"SECTION 15. **Penalty.** The penalties for all consequences of a violation for speeding initiated by the use of a photo speed imaging detector system, [or] for disregarding a steady red signal initiated by the use of a photo red light imaging

system, or for illegally crossing longitudinal traffic lane markings initiated by the use of a photo technology system shall be as provided in section 291C-161, Hawaii Revised Statutes."

10. By amending subsection (a) of section 16 to read:

"(a) The department shall develop a request for proposals to purchase, lease, rent, use, install, maintain, and operate photo red light imaging [and], photo speed imaging detector, or photo technology systems in any county as provided in this Act. The request for proposals and all aspects of the contract shall be subject to chapter 103D, Hawaii Revised Statutes."

11. By amending subsections (a) and (b) of section 17 to read:

"(a) Each county, with prior approval from the department, may contract with one or more contractors to purchase, lease, rent, use, install, maintain, and operate photo red light imaging [and], photo speed imaging detector, or photo technology systems as provided in this Act.

(b) Notwithstanding any other law to the contrary, the contractor shall provide the following services and activities to implement the photo speed imaging detector [and], photo red light imaging, or photo technology systems:

(1) Equipment installation;
(2) Data processing, including custom software development and integration;
(3) Staffing and training of law enforcement personnel and other persons as necessary to provide for effective traffic enforcement;
(4) Film delivery, retrieval, and processing;
(5) Image evaluation;
(6) License plate identification and verification;
(7) Review of individual motor vehicle registration records, pursuant to sections 286-45 and 286-172, Hawaii Revised Statutes, to obtain access only to the registered motor vehicle owner's name and address; this data shall only be used as is necessary to carry out the provisions of the contract and the purposes of this Act and may not otherwise be publicly disclosed;
(8) Citation generation, processing, and tracking;
(9) Data transfer to agency and court;
(10) Violation and statistical data collection, analysis, and reporting;
(11) Twenty-four-hour support services, consulting, technical assistance, and Internet access;
(12) Community awareness and public relations services; and
(13) Any other services, activities, or equipment deemed necessary by the department and each county."

12. By amending subsection (f) of section 17 to read:

"(f) The department of budget and finance shall create an account and set aside a portion of the revenues received from the fines obtained from citations initiated as a result of the [photo speed imaging detector and photo red light imaging] traffic enforcement demonstration project to offset the contractor's costs of operating the photo speed imaging detector [and], photo red light imaging, and photo technology systems."

13. By amending section 23 to read:

"SECTION 23. **Report.** Each county shall submit interim and final reports to the legislature as follows:

(1) The interim report shall document the progress made in implementing the demonstration project and any contract entered into with a private contractor. The interim report shall be submitted to the legislature no

later than twenty days before the convening of the regular sessions of 1999 and 2000; and

(2) The final report shall evaluate the effectiveness of the demonstration project, and shall include the following:
   (A) The total fine revenue generated by using the photo speed imaging detector [and], photo red light imaging, or photo technology systems;
   (B) The number of citations and summonses issued by the photo speed imaging detector [and], photo red light imaging, or photo technology systems;
   (C) The amount paid to the contractor providing the photo speed imaging detector [and], photo red light imaging, or photo technology systems;
   (D) The effect of the demonstration project on traffic safety;
   (E) The degree of public acceptance of the project;
   (F) The process of administration of the project;
   (G) An evaluation of the costs and benefits of the project;
   (H) A review of the effectiveness of contracts entered into under this Act and the performance of the contractor;
   (I) Recommendations for design or planning changes that might reduce traffic congestion on state or county highways; and
   (J) Findings and recommendations as to whether to continue any contract entered into pursuant to this Act, make the project permanent, or adopt another alternative.

   The final report shall include any proposed implementing legislation as may be necessary, and shall be submitted to the legislature no later than twenty days before the convening of the regular session of 2001."

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 264 S.B. NO. 776

A Bill for an Act Relating to Financial Services Loan Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 412:9-401, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Other securities used as reserves shall be limited to obligations of the United States and its agencies and of this State and its counties that qualify as permitted investments under sections 412:9-409(a)(1) and (a)(2) and 412:9-409(b), reverse repurchase agreements whereby the depository financial services loan company has purchased obligations of the United States under terms which require the seller to repurchase the obligations of the United States for cash on demand or in not less than thirty days, bankers acceptances, irrevocable lines of credit of one year or more approved by the commissioner, and securities listed on the New York or the American stock exchanges[.] or the Nasdaq National Market of the Nasdaq Stock Market. Not more than twenty-five per cent of the total reserve shall be held in

securities listed on the New York or American stock exchanges[.], or the Nasdaq National Market of the Nasdaq Stock Market."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 265 S.B. NO. 798

A Bill for an Act Relating to Noise.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to set forth conditions under which the counties can regulate noise issues and to clarify that the department of health has jurisdiction over noise issues regarding the convention center.

SECTION 2. Section 46-17, Hawaii Revised Statutes, is amended to read as follows:

"**§46-17 Regulation of certain public nuisances.** Any provision of law to the contrary notwithstanding, the council of any county may adopt and provide for the enforcement of ordinances regulating or prohibiting noise, smoke, dust, vibration, or odors which constitute a public nuisance. No such ordinance shall be held invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State; provided that in any case of conflict between [the] a statute or rule and an ordinance, the law [which affords] affording the most protection to the public shall apply[; provided further that such], with the exception that:

(1) An ordinance shall not be effective to the extent that it is inconsistent with any permit for agricultural burning granted by the [state] department of health under authority of chapter 342B, or to the extent that it prohibits, subjects to fine or injunction, or declares to be a public nuisance any agricultural burning [which is] conducted in accordance with such a permit[.]; and

(2) An ordinance shall not be effective to the extent that it is inconsistent with any noise rule adopted by the department of health under authority of chapter 342F."

SECTION 3. Section 342F-20, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§342F-20[]] Effect of laws, ordinances, and rules.** [(a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b)] Any county may adopt ordinances and rules governing any matter relating to excessive noise control [which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to excessive noise control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.] as provided in section 46-17,

and any conflict between state and county law shall be resolved as provided in section 46-17."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 266

S.B. NO. 809

A Bill for an Act Relating to Boating.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Vessels used for purposes of recreational boating activities which are also the principal habitation of the owners shall occupy no more than one hundred twenty-nine berths at Ala Wai boat harbor and thirty-five berths at Keehi boat harbor, which is equal to fifteen per cent of the respective total moorage space that was available as of July 1, 1976, at the Ala Wai and Keehi boat harbors. Notwithstanding the purposes of small boat harbors, moorage for commercial vessels and commercial vessel activities is not permitted in the Ala Wai and Keehi boat harbors; provided that commercial catamarans, for which valid permits or registration certificates have been issued by the department which allow the catamarans to operate upon Waikiki shore waters for hire, may be permitted to moor in Ala Wai boat harbor at facilities leased for commercial purposes. The department shall allow a sole proprietor of a catamaran operating with a valid commercial registration certificate issued by the department for a commercial catamaran to land its commercial catamaran on Waikiki beach and to operate upon Waikiki shore waters for hire, to transfer the ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate under the commercial registration certificate. The existing commercial registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity. No commercial registration issued to an owner of a commercial catamaran operating in the Waikiki area shall be denied or revoked without a prior hearing held in accordance with chapter 91."

SECTION 2. Any corporation holding a valid commercial registration certificate issued by the department as of January 1, 1999, to operate a commercial catamaran upon Waikiki shore waters for hire and to land on Waikiki beach shall not have its commercial registration certificate revoked on the basis of a past error or omission executed by the department in allowing the transfer of ownership of the vessel from personal ownership to corporate or other business ownership.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 267 S.B. NO. 822

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

"**§431:10A- Contraceptive services; religious employers exemption.** (a) A "religious employer" is an entity for which each of the following is true:

(1) The inculcation of religious values is the purpose of the entity;
(2) The entity primarily employs persons who share the religious tenets of the entity;
(3) The entity is not staffed by public employees; and
(4) The entity is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

For the purpose of this definition, any educational, health care, or other non-profit institution or organization owned or controlled by the religious employer is included in this exemption.

(b) Notwithstanding any other provision of this chapter, any religious employer may request a health insurance plan without coverage for contraceptive services and supplies that are contrary to the religious employer's religious tenets. If so requested, the health insurer, mutual benefit society, or health maintenance organization shall provide a health insurance plan without coverage for contraceptive services and supplies. This subsection shall not be construed to deny an enrollee coverage of, and timely access to contraceptive services and supplies.

(c) Each religious employer that invokes the exemption provided under this section shall:

(1) Provide written notice to enrollees upon enrollment with the plan, listing the contraceptive health care services the employer refuses to cover for religious reasons;
(2) Provide written information describing how an enrollee may directly access contraceptive services and supplies in an expeditious manner; and
(3) Ensure that enrollees who are refused contraceptive services and supplies coverage under this section have prompt access to the information developed under paragraph (2). Such notice shall appear, in not less than twelve point type, in the policy, application, and sales brochure for such policy.

(d) Nothing in this section shall be construed to exclude coverage for prescription contraceptive supplies ordered by a health care provider with prescriptive authority for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for prescription contraception that is necessary to preserve the life or health of an enrollee.

(e) Health insurers, mutual benefit societies, and health maintenance organizations shall allow enrollees in a health plan exempted under this section to directly purchase coverage of contraceptive supplies and outpatient contraceptive services. The enrollee's cost of purchasing such coverage shall not exceed the enrollee's pro rata share of the price the group purchaser would have paid for such coverage had the group plan not invoked a religious exemption.

(f) This section shall not be construed as to require a health insurer, mutual benefit society, health maintenance organization, health care facility, or health care

provider to provide any health care services without appropriate payment of premium or fee.

(g) For purposes of this section:

"Contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, nurse practitioner-delivered, certified nurse midwife-delivered, or nurse-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

"Contraceptive supplies" means all Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy."

SECTION 2. Section 431:10A-116.6, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§431:10A-116.6[]] Contraceptive services[; options].** (a) Notwithstanding any provision of law to the contrary, each employer group health policy, contract, plan, or agreement issued or renewed in this State on or after January 1, [1994, that provides for payment of or reimbursement for pregnancy-related services, shall provide as an employer option,] 2000, shall cease to exclude contraceptive services or supplies for the subscriber or any dependent of the subscriber who is covered by the policy[.], subject to the exclusion under section 431:10A- .

(b) [Any] Except as provided in subsection (c), all policies, contracts, plans, or agreements under subsection (a) [above], that provide contraceptive services or supplies, or prescription drug coverage, shall not exclude any [Food and Drug Administration-approved prescriptive contraceptive drug or device,] prescription contraceptive supplies or impose any unusual copayment, charge, or waiting requirement for such [drug or device.] supplies.

(c) Coverage for oral contraceptives shall include at least one brand from the monophasic, multiphasic, and the progestin-only categories. A member shall receive coverage for any other oral contraceptive only if:

(1) Use of brands covered has resulted in an adverse drug reaction; or

(2) The member has not used the brands covered and, based on the member's past medical history, the prescribing health care provider believes that use of the brands covered would result in an adverse reaction.

[(c)] (d) For [the purpose] purposes of this section[, "contraceptive services"]:

"Contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, nurse practitioner-delivered, certified nurse midwife-delivered, or nurse-delivered medical services intended to promote the effective use of [prescription] contraceptive supplies or devices to prevent unwanted pregnancy.

"Contraceptive supplies" means all Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.

[(d)] (e) Nothing in this section shall be construed to extend the practice or privileges of any health care provider beyond that provided in the laws governing the provider's practice and privileges."

SECTION 3. Section 432:1-604.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432:1-604.5[]] Contraceptive services[; options].** (a) Notwithstanding any provision of law to the contrary, each employer group health policy, contract, plan, or agreement issued or renewed in this State on or after January 1, [1994, that provides for payment of or reimbursement for pregnancy-related services, shall provide as an employer option,] 2000, shall cease to exclude contracep-

tive services or supplies, and contraceptive prescription drug coverage for the subscriber or any dependent of the subscriber who is covered by the policy[.], subject to the exclusion under section 431:10A- .

(b) [Any] Except as provided in subsection (c), all policies, contracts, plans, or agreements under subsection (a), that provide contraceptive services or supplies, or prescription drug coverage, shall not exclude any [Federal Drug Administration-approved prescriptive contraceptive drug or device,] prescription contraceptive supplies or impose any unusual copayment, charge, or waiting requirement for such drug or device.

(c) Coverage for contraceptives shall include at least one brand from the monophasic, multiphasic, and the progestin-only categories. A member shall receive coverage for any other oral contraceptive only if:

(1) Use of brands covered has resulted in an adverse drug reaction; or

(2) The member has not used the brands covered and, based on the member's past medical history, the prescribing health care provider believes that use of the brands covered would result in an adverse reaction.

[(c)] (d) For [the purpose] purposes of this section[, "contraceptive services"]:

"Contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, nurse practitioner-delivered, certified nurse midwife-delivered, or nurse-delivered medical services intended to promote the effective use of [prescription] contraceptive supplies or devices to prevent unwanted pregnancy.

"Contraceptive supplies" means all Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.

[(d)] (e) Nothing in this section shall be construed to extend the practice or privileges of any health care provider beyond that provided in the laws governing the provider's practice and privileges."

SECTION 4. The insurance commissioner shall review the experience of employers in providing coverage of contraceptive services and supplies as part of their health insurance coverage for employees after the effective date of this Act to determine whether the cost of health insurance has increased as a result of this Act. The review shall include an assessment of the impact of contraceptive coverage on reducing maternity costs, employee turnover, and absenteeism costs around maternity and family-related costs. The insurance providers and business organizations, including the Chamber of Commerce of Hawaii, are requested to assist the insurance commissioner in obtaining the necessary information from employers to effectuate the review.

The insurance commissioner shall submit a report of the insurance commissioner's findings to the legislature no later than twenty days prior to the convening of the regular session of 2001.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 268

S.B. NO. 823

A Bill for an Act Relating to Sentencing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in homes in which domestic violence occurs, children are at high-risk of suffering abuse themselves. In addition, witnessing acts of domestic violence—whether in the form of partner violence, generalized hostility, or child maltreatment—is one of the best predictors of juvenile delinquency and adult criminality. Regardless of whether children are physically abused, however, the legislature finds that the emotional effects of witnessing family violence are very similar to the psychological trauma associated with being a victim of child abuse.

Nationally, an estimated 3.3 million children witness domestic violence each year. In families where domestic violence is prevalent, the emotional and mental suffering and harm is greater to those children who actually are present during the battering than to those who do not witness this trauma first hand.

Accordingly, the purpose of this Act is to require judges when imposing a sentence for certain domestic violence offenses, to consider that the domestic violence was committed in the presence of a minor.

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"**§706- Sentencing in offenses involving abuse of a family or household member committed in the presence of a minor.** (1) In addition to the factors considered under section 706-606, the court shall consider the following aggravating factors in determining the particular sentence to be imposed:

(a) The defendant has been convicted of committing or attempting to commit an offense involving abuse of a family or household member;

(b) The defendant is or has been a family or household member of either a minor referred to in paragraph (c) or the victim of the offense; and

(c) The offense contemporaneously occurred in the presence of a minor.

(2) As used in this section:

"Family or household member" has the same meaning as defined in section 709-906.

"Offense" means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707-730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), or 709-906 (abuse of family and household members).

"In the presence of a minor" means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 269 H.B. NO. 8

A Bill for an Act Relating to Motor Vehicle Driver Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-109, Hawaii Revised Statutes, is amended to read as follows:

"**§286-109 General provision governing the issuance of licenses.** (a) Upon payment of the required fee and upon demonstrating the ability to operate a certain category or categories of motor vehicles to the satisfaction of the examiner of drivers, an applicant for a driver's license shall be issued a single license of a design approved by the director of transportation upon which is made a notation of [the]:

(1) The category or categories of motor vehicles the applicant may operate[, any];

(2) Any restrictive provisions to which the license is subject[,]; and[, where]

(3) When the license is issued to a person under twenty-one years of age, a statement, in clearly legible print that shall contrast with the other information appearing on the license, which indicates the date on which the person will attain the age of twenty-one years.

(b) The examiner of drivers shall not issue or renew any driver's license using the driver's social security number on the driver's license.

(c) Statutes of limitations and other provisions of this chapter notwithstanding, no driver's license or instruction permit shall be issued or renewed under this section, where the examiner of drivers is notified by the district judge, traffic violations bureaus of the district courts, or the judge of the circuit court that the applicant has failed to respond to a traffic citation or summons for the violation of any traffic laws of a county, this chapter or [chapters] chapter[1] 286G, 287, 290, 291, or 291C, and the same remains delinquent and outstanding, or the applicant, having timely responded initially, has as of the time of the application, failed to comply in full with all orders of the court."

SECTION 2. Section 286-111, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Every application shall state the full name, date of birth, sex, occupation, social security number, the residence address and business address, if any, of the applicant, and shall briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver, and, if so, when and in what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, or refusal."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2001.

(Approved July 6, 1999.)

Note

1. Should be underscored.

ACT 270 H.B. NO. 170

A Bill for an Act Relating to Long-Term Care Tax Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is a recommendation of the joint legislative committee on long-term care, as contained in its report to the legislature dated December 1, 1998. This Act is a companion to a separate measure that amends the long-term care insurance law.

The legislature believes that the State should encourage its residents to purchase long-term care insurance in order to provide a modicum of financial security in times of frailty or disability and that the ideal setting to provide long-term care insurance is through the employment workplace. The legislature finds that while employers may claim an income tax deduction under existing state and federal income tax laws for amounts they pay for long-term care insurance premiums for their employees as an employee benefit, individual employees may claim an income tax deduction for the insurance premiums they pay under the federal, but not state, income tax law.

The purpose of this Act is to conform Hawaii income tax law to the federal income tax law applying to individuals to allow a state tax deduction for long-term care insurance premiums.

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

"**§235-2.4 Operation of certain Internal Revenue Code provisions.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

(1) $1,900 in the case of:
   (A) A joint return as provided by section 235-93, or
   (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code),
(2) $1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code),
(3) $1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household, or
(4) $950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of $500 or such individual's earned income. Section 63(f) shall not be operative in this State.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this

chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

[(d) Section 213 (with respect to medical, dental, etc., expenses) of the Internal Revenue Code shall be operative, except that subsections (d)(1)(C) with respect to long-term care services, (d)(1)(D) as it applies to long-term care insurance contract premiums, (d)(7) as it applies to long-term care insurance contract premiums, and (d)(10) as it applies to eligible long-term care premiums shall not be operative in this State.

(e)] (d) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

[(f)] (e) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the [secretary] Secretary of the Treasury of the United States.

[(g)] (f) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

[(h)] (g) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

[(i)] (h) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

[(j)] (i) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction which is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

[(k)] (j) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

[(l)] (k) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

[(m)] (l) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

(1) The deduction for exemptions shall be allowed as provided in section 235-54(b).

(2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State.

(3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

[(n)] (m) Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the determination of the interest rate established under section 6621 of the Internal Revenue Code referred to in section 644(a)(2) of the Internal Revenue Code shall instead be the interest rate established under section 231-39(b)(4).

[(o)] (n) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

[(p)] (o) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

[(q)] (p) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a) shall be limited to five years.

[(r)] (q) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

[(s)] (r) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

[(t)] (s) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

[(u)] (t) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset which is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis.''

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1998.

(Approved July 6, 1999.)

ACT 271 H.B. NO. 274

A Bill for an Act Relating to Families.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that child abuse and neglect are a root cause of many serious social problems, including emotional and mental health problems, alcohol and drug abuse and addiction, delinquency, and crime. Child abuse continues to escalate with fifteen thousand reports and over five thousand cases investigated annually in Hawaii. The most severe cases continue to be among the youngest, most vulnerable children.

During the interim following the regular session of 1998, child protection legislative roundtable discussions were convened to suggest statutory, guideline, rule, regulation, and other changes to improve Hawaii's child protective system. Legislators, the departments of human services, health, and the attorney general, the judiciary, private nonprofit child and family serving agencies, and concerned individuals communicated and collaborated with one another, on behalf of abused and neglected children and their families, to develop formal and informal mechanisms for working together.

As a coordinated response to prevent and treat child abuse, the roundtable collectively suggested that the following provisions be added or strengthened:

(1) Mandated training for foster parents of licensed foster homes;
(2) Protective custody of a child without court order;
(3) Required reporting of child abuse and neglect; and
(4) A procedure governing the timely enrollment of foster children into an appropriate health insurance program.

The purpose of this Act is to improve Hawaii's child protection system.

SECTION 2. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to part IX to be appropriately designated and to read as follows:

"§587- **Medical and health case management.** The department shall establish a procedure governing the timely enrollment of foster children into an appropriate health insurance program."

SECTION 3. Section 346-17, Hawaii Revised Statutes, is amended to read as follows:

"**§346-17 Child placing organizations, child caring institutions, and foster boarding homes; authority over [and], investigation of[.], and standards for.** (a) No child placing organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets [with] the standards of conditions, management, and competence set by the department of human services.

(b) No child caring institution shall [be allowed to] receive minor children for care and maintenance unless it meets [with] the standards of conditions, management, and competence to care for and train children set by the department.

(c) No foster boarding home shall receive for care and maintenance any child unless [it meets with]:

(1) It meets with the standards of conditions, management, and competence set by the department[.]; and

(2) The foster boarding home applicant successfully completes foster parent training; provided that after July 1, 1999, new special licensed or relative foster home care providers shall successfully complete foster parent training within the first year following placement of the first child into the new special licensed or relative foster home.

(d) The department shall [make] adopt rules pursuant to chapter 91 relating to:[1]

(1) [standards] Standards for the organization and administration of child placing organizations[,];

(2) [standards] Standards of conditions, management, and competence for the care and training of minor children in child caring institutions and foster boarding homes [,]; and

(3) [standards] Standards of conditions and competence of operation of foster boarding homes as may be necessary to protect the welfare of children.

(e) All rules of the department shall have the force and effect of law, and any violation thereof or of this section shall be punishable by a fine of not more than $200.

(f) As a condition for a certificate of approval, any organization, institution, or home shall meet the standards to assure the reputable and responsible character of its operators and employees by complying with the requirements of a criminal history record check under section 346-19.6.

(g) Upon approval of [any such] the organization, institution, or home, the department or its authorized agents shall issue a certificate of approval [which] that shall continue in force for one year or for two years if the organization, institution, or home meets the criteria established by the department, unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual or biennial investigation, if the investigation discloses that the organization, institution, or home continues to meet with the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or foster boarding home, and no person or organization shall operate or maintain [such] the organization, institution, or home without the certificate.

(h) Any child placing organization, child caring institution, or foster boarding home shall be subject to investigation at any time and in [such] a manner, place, and form as may be prescribed by the department or its authorized agents.

(i) As used in this section, "foster parent training" means training or instruction in special skills and knowledge to care for foster children."

SECTION 4. Section 350-1.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department [or] and to the police department:

(1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including[,] but not limited to[,] physicians, including physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
(2) Employees or officers of any public or private school;
(3) Employees or officers of any public or private agency or institution, or other individuals, providing social, medical, hospital, or mental health services, including financial assistance;
(4) Employees or officers of any law enforcement agency, including[,] but not limited to[,] the courts, police departments, correctional institutions, and parole or probation offices;
(5) Individual providers of child care, or employees or officers of any licensed or registered child care facility, foster home, or similar institution;
(6) Medical examiners or coroners; and
(7) Employees of any public or private agency providing recreational or sports activities."

SECTION 5. Section 350-2, Hawaii Revised Statutes, is amended to read as follows:

"**§350-2 Action on reporting.** (a) Upon receiving a report concerning child abuse or neglect, the department shall proceed pursuant to chapter 587 and the department's rules.

(b) The department shall inform the appropriate police department of all reports received by the department regarding a case of child abuse or neglect, including reports received under section 350-1.1; provided that the name of the person who reported the case of child abuse or neglect shall be released to the police department pursuant only to court order or the person's consent.

[(b)] (c) The department shall inform the appropriate police department or office of the prosecuting attorney of the relevant information concerning a case of child abuse or neglect when [such] the information is required by the police department or the office of the prosecuting attorney for the investigation or prosecution of that case; provided that the name of the [reporter,] person who [requested that the reporter's name be confidential,] reported the case of child abuse or neglect shall [only] be released to[2] the[3] police department or[4] the[3] office of the prosecuting attorney pursuant only to court order[.] or the person's consent.

[(c)] (d) The department shall maintain a central registry of reported child abuse or neglect cases and shall promptly expunge the reports in cases if:

(1) The department has found the reports to be unsubstantiated; or

(2) The petition arising from the report has been dismissed by order of the family court after an adjudicatory hearing on the merits pursuant to chapter 587.

For purposes of expungement under paragraph (1), a report is unsubstantiated only when the department has found the allegations to be frivolous or to have been made in bad faith.

However, the department may retain records and information of alleged child abuse and neglect with respect to the child [that] who is the subject of the alleged abuse.

The department shall adopt rules as may be necessary in carrying out this section."

SECTION 6. Section 587-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A police officer shall assume protective custody of[2] the[3] child without a court order and without the consent of the child's family regardless of whether the child's family is absent, if in the discretion of [such] the police officer, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child.

A police officer may assume protective custody of the child without a court order and without the consent of the child's family regardless of whether the child's family is absent, if in the discretion of the police officer:

(1) The child has no legal custodian who is willing and able to provide a safe family home for the child; or

(2) There is evidence that the parent or legal guardian of the child has subjected the child to harm or threatened harm and that the parent or legal guardian is likely to flee the jurisdiction of the court with the child."

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.[5]

SECTION 9. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Notes

1. Colon should be underscored.
2. Prior to amendment "a" appeared here.
3. "The" should be underscored.
4. Prior to amendment "an" appeared here.
5. Edited pursuant to HRS §23G-16.5.

ACT 272 H.B. NO. 294

A Bill for an Act Relating to the Distribution of Sample Tobacco Products and Tobacco Promotional Materials.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that as tobacco companies compete for shares of a shrinking domestic market, advertisements and promotions of cigarette and tobacco products have intensified, with the tobacco industry spending in excess of $6,000,000,000 on advertisements and promotions. The distribution of brand-name promotional items is a major component of the tobacco industry's marketing strategy. The legislature further finds that there is a direct correlation between tobacco advertising and under-age smoking. Studies show that tobacco advertising promotes smoking by using images and messages that appeal to our children, and that they are particularly susceptible to these images and messages. In addition, minors have greater recall for and are more influenced by tobacco advertising than the adult population.

The legislature recognizes that First Amendment rights may be implicated by the restrictions on the distribution of cigarette or tobacco promotional materials. However, the legislature believes that the State has a compelling interest in reducing illegal sales of tobacco products to minors.

First, the State has a compelling interest in preventing the tens of thousands of minors from being seduced into experimenting with tobacco products that all too often leads to a lifetime of addiction. According to the Food and Drug Administration, approximately three thousand children become regular smokers every day. Over eighty per cent of adult smokers started when they were children or adolescents. Virtually no one first becomes a tobacco user after the age of twenty-one.

Second, reducing the enormous cost of providing health care to future generations of smokers is a compelling government interest in supporting restrictions on tobacco advertising and promotions.

The legislature believes that more aggressive measures are needed to counteract the social forces that continue to induce Hawaii's young people to use tobacco products. In addition, the legislature believes that the First Amendment does not protect commercial speech that proposes an illegal transaction. Most smokers are initiated into tobacco use as children, develop their tobacco habits as children, and become addicted as children, even though it is illegal to sell tobacco products to minors. Because promotional items are all too often used to deliver a selling message to children, and because there is no way to limit the distribution of these products to adults, such products should be restricted without offending the First Amendment.

Therefore, the purpose of this Act is to prohibit the distribution of:

(1) Sample cigarette or tobacco promotional materials and coupons redeemable for cigarette or tobacco promotional materials within one thousand feet of any school; and

(2) Sample cigarette or tobacco products and coupons redeemable for cigarette or tobacco products in or on any public street, sidewalk, or park, or within one thousand feet of any school.

SECTION 2. Chapter 328K, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§328K- Distribution of sample cigarette or tobacco products, cigarette or tobacco promotional materials, and coupons redeemable for cigarette or tobacco products or promotional materials.** (a) It is unlawful for any person to

distribute samples of cigarette or tobacco products, or coupons redeemable for cigarette or tobacco products, in or on any public street, sidewalk, or park, or within one thousand feet of any elementary, middle or intermediate, or high school.

(b) It is unlawful for any person to distribute cigarette or tobacco promotional materials, or coupons redeemable for cigarette or tobacco promotional materials, within one thousand feet of any elementary, middle or intermediate, or high school.

(c) This section shall not apply:

(1) Within private commercial establishments, such as stores and restaurants, where tobacco products are sold, as long as such distribution is not visible to the public from outside the establishment; or

(2) To commercial establishments where access to the premises by persons under eighteen years of age is prohibited by law.

(d) As used in this section:

"Distribute" means to pass out to members of the general public free of charge for the exclusive purpose of promoting a product.

§328K- Violations and Penalty. Any person convicted of violating any provision of section 328K- shall be fined not more than $1,000."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 273 H.B. NO. 325

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 432E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§432E- Licensure of managed care plan medical directors. The medical director of any managed care plan providing services in the State shall hold an unlimited license to practice medicine in the State pursuant to chapter 453 or 460."

SECTION 2. Section 432E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Medical director" means the person who is authorized under a managed care plan and who makes decisions for the plan denying or allowing payment for medical treatments, services, or supplies based on medical necessity or other appropriate medical or health plan benefit standards.</u>"

PART II

SECTION 3. Section 321-15, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"**§321-15 [Annual] Biennial registration; fees, failure to register.** (a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health[,] every other year in accordance with the rules of the department, before February 1 [of each year] except where superseded by federal law, and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding such a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person's license; provided that the license shall be restored upon written application therefor together with a payment of all delinquent fees and an additional late reregistration fee that may be established by the director of health. All fees collected pursuant to this section shall be deposited into the environmental health education fund established under section 321-27."

PART III

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 274 H.B. NO. 719

A Bill for an Act Relating to Abandoned Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-51, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This part shall be administered by the director of finance in conjunction with the requirements of sections 249-1 to 249-13 and shall entail no additional expense or charge to the person registering the ownership of a motor vehicle other than as provided by this section or by other laws; provided that for each new certificate of ownership issued by the director of finance under section 286-52, the director of finance may charge a fee which shall be deposited in the general fund. The fees charged to issue a new certificate of ownership shall be established by the county's legislative body.

Notwithstanding any other law to the contrary, an additional fee of not more than $1 for each certificate of registration for a U-drive motor vehicle and $2 for each certificate of registration for all other motor vehicles may be established by ordinance and collected annually by the director of finance of each county, to be used and administered by each county for the purpose of beautification and other related activities of highways under the ownership, control, and jurisdiction of each county, and to defray the additional cost in the disposition and other related activities

of abandoned vehicles as prescribed in chapter 290. The moneys so assessed and collected shall be placed in a revolving fund entitled, "the highway beautification and disposal of abandoned vehicles revolving fund".''

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2000.

(Approved July 6, 1999.)

ACT 275 H.B. NO. 801

A Bill for an Act Relating to Special Purpose Revenue Bonds for Processing Enterprises.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that CEATECH USA's "total shrimp production systems" in operation at Kekaha on the island of Kauai is experiencing very successful yields. This has been attributed to a number of factors including optimal weather conditions, an abundant source of clean saline water, and proven shrimp farming expertise built on years of research and practical application.

The anticipated phasing out of the sugar industry at Kekaha could potentially provide as much as twelve thousand acres of land suitable for a diverse number of crops including the production of shrimp. CEATECH USA's shrimp operation has the potential not only of producing hundreds of direct and indirect jobs thus helping to fill the expected economic void within that region, but also of becoming the nation's largest producer of cultured marine shrimp.

The extraordinary flavor and texture of the fresh Kekaha produced shrimp is gaining a favorable reputation that could fill a recognized niche. The National Fisheries Institute reports that imports account for eighty-one per cent or six hundred million pounds of these delectable high-priced morsels consumed in the United States. This economic opportunity is another reason for the legislature to lend its support to the shrimp industry in Hawaii.

Including the value added from processing, marketing, distribution, and service, shrimp accounts for more than $10,000,000,000 in annual United States consumer spending. The construction of a processing plant is absolutely essential for the evolution and growth of this shrimp operation on Kauai.

The legislature further finds and declares that the issuance of special purpose revenue bonds under this Act constitutes a processing enterprise pursuant to part IV, chapter 39A, Hawaii Revised Statutes, and is in the public interest.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $3,000,000, in one or more series, for the purpose of assisting CEATECH USA in planning and building a processing plant for shrimp.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act constitutes a processing enterprise project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and is in the public interest.

SECTION 3. The special purpose revenue bonds issued under section 2 of this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes,

relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized to issue from time to time, refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 276 H.B. NO. 877

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Kuakini Medical Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $30,000,000 in one or more series for the purpose of assisting Kuakini Medical Center and any one or more of its not-for-profit affiliates in financing or refinancing the costs of construction of, improvements to, and equipment for its health care facilities, the purchase of tangible assets (including land and improvements), and other capital-related projects for Kuakini Medical Center and any one or more of its not-for-profit affiliates. The legislature finds and determines that the activities and facilities of Kuakini Medical Center and its affiliates constitute projects as defined in part II, chapter 39A, Hawaii Revised Statutes, and that the financing thereof constitutes assistance to health care facilities.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The authorization to issue special purpose revenue bonds under section 2 of this Act shall lapse on June 30, 2003.

SECTION 5. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds:

(1) Originally authorized in the amount of $20,000,000 to assist Kuakini Medical Center under Act 16, Session Laws of Hawaii 1981, First Special Session; and
(2) Authorized in section 2 of this Act.

In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The refunding special purpose revenue bonds issued under this Act shall be issued pursuant to chapter 39A, part II, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 277 H.B. NO. 945

A Bill for an Act Relating to Agricultural Parks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the lands of Hawaii's agricultural parks should be utilized to their fullest and highest potential. Unfortunately, many lessees lack the resources or methods to display and market their crops and commodities in a setting that is conducive to public access by both residents and visitors. Further, the agricultural park program's statutory limitation prevents lessees from operating a commercial venture within the agricultural park complex. The legislature finds that the department of agriculture should take a more active role in assisting and promoting agriculture-related commercial activity within an agricultural park complex.

The purpose of this Act is to authorize the department of agriculture to allow agriculture-related commercial operations to be conducted by lessees in agricultural park complexes. These commercial activities may include processing, marketing, and displaying agricultural crops or commodities for sale at a common site within the agricultural park complex. A qualifying project shall be for public use and shall promote the public interest and welfare by supporting the economy of the State.

SECTION 2. Chapter 166, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§166- Commercial activity.** The department may allow, in each of its existing and future agricultural parks, the disposition of no more than two lots within an agricultural park for the processing, marketing, and displaying of agricultural crops or commodities, which shall include any product created through value-added processes as defined by rules adopted by the board. The department shall allow agricultural-based commercial venture operations that may sell to the general public; provided that any such lots shall be leased and operated by an agricultural park lessee in good standing with the department."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 278 H.B. NO. 955

A Bill for an Act Relating to Crime.

Be It Enacted by the Legislature of the State of Hawaii:

PART I.

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§711- Violation of privacy in the first degree.** (1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, photographing, videotaping, filming, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place, or uses any such unauthorized installation.

(2) Violation of privacy in the first degree is a class C felony."

SECTION 2. Section 711-1111, Hawaii Revised Statutes, is amended to read as follows:

"**§711-1111 Violation of privacy[.] in the second degree.** (1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

(a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place; or

(b) Installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, photographing, videotaping, filming, recording, amplifying, or broadcasting sounds or events in that place[,] other than another person in a stage of undress or sexual activity, or uses any such unauthorized installation; or

(c) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; or

(d) Intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this subsection does not apply to:

(i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or

(ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use; or

(e) Divulges without the consent of the sender or the receiver the existence or contents of any message by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message was unlawfully intercepted, or if the accused learned of the message in the course of employment with an agency engaged in transmitting it[.]; or

(f) Knowingly possesses materials created under circumstances prohibited in section 711-___.

(2) Violation of privacy in the second degree is a misdemeanor."

PART II.

SECTION 3. The primary purpose of this Part is to maintain support for the crime victim compensation commission until it is self-sufficient and independent of state appropriations. In working towards self-sufficiency, the commission must be given three to five years to build its revenues. California's crime victim board is an example of a program that came from being millions of dollars in debt to being able to provide rebates in the form of monetary incentives to the judiciary and corrections. Across the nation, twenty-nine states are able to maintain self-sufficiency through a system of compensation fees, civil recoveries, and restitution and are not dependent on general fund appropriations. Of the remaining twenty-one states, twelve fund their programs through general fund appropriations, a federal grant, and offender assessments and nine are funded by general fund appropriations and a federal grant. During the first six months of implementation, the commission received $105,000 in revenues. This is far short of the resources needed to operate an effective program.

SECTION 4. Section 351-62.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Funds received pursuant to section 354D-12(b)(1) and amounts received pursuant to sections 351-35, 351-62.6, 351-63, and 706-605 shall be deposited into the crime victim compensation special fund. Moneys received shall be used for compensation payments, [and] operating expenses, [of which not more than thirty per cent shall be used for operating expenses and to fund] salaries of positions as authorized by the legislature[.], and collection of fees. The commission may enter into memorandums of agreement with the judiciary for the collection of fees by the judiciary; provided that no funds shall be deposited by the judiciary into the crime victim compensation special fund until collected."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect upon its approval; provided that Section 4 shall take effect on July 1, 1999, and shall be repealed on July 1, 2001.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 279 H.B. NO. 970

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Cardiac Institute, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility and thereby serves the public.

The legislature further finds that Pacific Cardiac Institute, Inc., is engaged in the planning, design, and construction of a patient-focused facility.

The legislature further finds that Pacific Cardiac Institute, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $15,000,000 in one or more series for the purpose of assisting Pacific Cardiac Institute, Inc., a not-for-profit Hawaii corporation, or a Hawaii nonprofit affiliate of same, with financing one or more of the following:

(1) Acquisition or leasing of land for a new facility;
(2) Plans, design, construction, and operation of a new health care facility; or
(3) Acquisition and installation of additional capital equipment for use in connection with Pacific Cardiac Institute, Inc., facilities.

The legislature finds and determines that the activities and facilities of Pacific Cardiac Institute, Inc., and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such in principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 280 H.B. NO. 1079

A Bill for an Act Relating to the Conversion of Business Entities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 415, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

"**§415-A Conversion into and from corporations.** (a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other entity if:

(1) The board of directors and shareholders of the domestic corporation approve a plan of conversion in the manner prescribed by section 415-73 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;

(2) The conversion is permitted by, and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;

(3) At the time the conversion becomes effective, each shareholder of the domestic corporation, unless otherwise agreed to by that shareholder, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;

(4) The shareholders of the domestic corporation, as a result of the conversion, shall not become personally liable, without the shareholders' consent, for the liabilities or obligations of the converted entity; and

(5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign corporation or other entity may adopt a plan of conversion and convert to a domestic corporation if the conversion is permitted by and complies with the laws of the state or country in which the foreign corporation or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

(1) The name of the converting entity and the converted entity;

(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof;

(5) If the converted entity is a domestic corporation, the articles of incorporation of the domestic corporation shall be attached; and

(6) If the converted entity is not a domestic corporation, proof that the converted entity is registered in this State shall be attached.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After a conversion of a domestic or foreign corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the converting entity without shareholder action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the director prior to the effective date of the conversion. If the director finds that the statement satisfies the requirements provided by law, the director, after all fees have been paid shall:

(1) Stamp the word "Filed" on the statement and the date of the filing;
(2) File the document in the director's office; and
(3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the director, the conversion shall be deemed abandoned and shall not be effective.

§415-B Articles of conversion. (a) If a plan of conversion has been approved in accordance with section 415-A and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

(1) A statement certifying the following:
  (A) The name, state, or country of incorporation, formation, or organization of the converting entity, and organizational form of the converting entity;
  (B) That a plan of conversion has been approved in accordance with section 415-A;
  (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
  (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder, partner, member, or owner of the converting entity or the converted entity;
(2) If the converting entity is a domestic corporation, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class or series;
(3) If the converting entity is a domestic corporation, the number of shares outstanding that voted for and against the plan, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and
(4) If the converting entity is a foreign corporation or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. If the converted entity is a domestic corporation, the articles of incorporation shall also be delivered to the director with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid, shall:

(1) Stamp the word "Filed" on the articles of conversion and the date of the filing;
(2) File the document in the director's office; and
(3) Issue a certificate of conversion to the converted entity or its authorized representatives.

§415-C Effective date of the conversion. Upon the issuance of the certificate of conversion by the director, the conversion shall be effective.

§415-D Effect of conversion. When a conversion becomes effective:

(1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
(2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
(3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
(4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
(5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
(6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic corporation, the shareholders of the domestic corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 415-80;
(7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
    (A) Agreed in writing to be liable for such debts or obligations;
    (B) Was liable under applicable law prior to the effective date of the conversion, for such debts or obligations; or
    (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
(8) If the converted entity is a foreign corporation or other entity, the converted entity shall:
    (A) Appoint a resident of this State, as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation; and

(B) Promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under section 415-81;

and

(9) If the converting entity is a domestic corporation, sections 415-80 and 415-81 shall apply as if the converted entity were the survivor of a merger with the converting entity."

SECTION 2. Chapter 415A, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

"**§415A-A Conversion into and from professional corporations.** (a) A professional corporation may adopt a plan of conversion and convert to any other entity if:

(1) The board of directors and shareholders of the professional corporation approve a plan of conversion in the manner prescribed by section 415-73 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;

(2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;

(3) At the time the conversion becomes effective, each shareholder of the converting entity, unless otherwise agreed to by that shareholder, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;

(4) The shareholders of the professional corporation, as a result of the conversion, shall not become personally liable without the shareholders' consent, for the liabilities or obligations of the converted entity; and

(5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any other entity may adopt a plan of conversion and convert to a professional corporation if the conversion is permitted by and complies with the laws under which the other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

(1) The name of the converting entity and the converted entity;

(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof;

(5) If the converted entity is a professional corporation, the articles of incorporation of the professional corporation shall be attached; and

(6) If the converted entity is not a professional corporation, proof that the converted entity is registered in this State shall be attached.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After a conversion of a professional corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the professional corporation without shareholder action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the director prior to the effective date of the conversion. If the director finds that the statement satisfies the requirements provided by law, the director, after all fees have been paid shall:

(1) Stamp the word "Filed" on the statement and the date of the filing;
(2) File the document in the director's office; and
(3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the director, the conversion shall be deemed abandoned and shall not be effective.

§415A-B Articles of conversion. (a) If a plan of conversion has been approved in accordance with section 415A-A and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

(1) A statement certifying the following:
    (A) The name, state, or country of incorporation, formation, or organization of the converting entity, and organizational form of the converting entity;
    (B) That a plan of conversion has been approved in accordance with section 415A-A;
    (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
    (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder of the converting entity or the converted entity;
(2) If the converting entity is a professional corporation, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class or series;
(3) If the converting entity is a professional corporation, the number of shares outstanding that voted for and against the plan and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and
(4) If the converting entity is another entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. If the converted entity is a professional corporation, the articles of incorporation shall also be delivered to the director with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

(1) Stamp the word ''Filed'' on the articles of conversion and the date of the filing;
(2) File the document in the director's office; and
(3) Issue a certificate of conversion to the converted entity or its authorized representatives.

§415A-C Effective date of the conversion. Upon the issuance of the certificate of conversion by the director, the conversion shall be effective.

§415A-D Effect of conversion. When a conversion becomes effective:
(1) The converting entity shall continue to exist without interruption but in the organizational form of the converted entity;
(2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
(3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
(4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
(5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
(6) The shares and other forms of ownership in the converting entity that are to be converted into shares or other forms of ownership in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a professional corporation, the former shareholders of the professional corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 415-80;
(7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
    (A) Agreed in writing to be liable for such debts or obligations;
    (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
    (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
(8) If the converted entity is a foreign corporation or other entity, the converted entity shall:
    (A) Appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation; and
    (B) Promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under section 415-81;
    and
(9) If the converting entity is a professional corporation, sections 415-80 and 415-81 shall apply as if the converted entity were the survivor of a merger with the converting entity.''

SECTION 3. Chapter 415B, Hawaii Revised Statutes, is amended by adding four new sections to part IV to be appropriately designated and to read as follows:

§415B-A Conversions into and from corporations. (a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other entity if:

(1) The board of directors and members of the domestic corporation approve a plan of conversion in the manner prescribed by section 415B-83 and if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;

(2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;

(3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by the member, or directors, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;

(4) The members of the domestic corporation, as a result of the conversion, shall not become personally liable without the members' consent, for the liabilities or obligations of the converted entity; and

(5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign corporation or other entity may adopt a plan of conversion and convert to a domestic corporation if the conversion is permitted by and complies with the laws of the state or country in which the foreign corporation or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

(1) The name of the converting entity and the converted entity;

(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) The manner and basis of converting the shares or other forms of ownership, of the converting entity into shares or other forms of ownership, of the converted entity, or any combination thereof;

(5) If the converted entity is a domestic corporation, the articles of incorporation of the domestic corporation shall be attached; and

(6) If the converted entity is not a domestic corporation, proof that the converted entity is registered in this State shall be attached.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After a conversion of a domestic corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the domestic corporation in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the director prior to the

effective date of the conversion. If the director finds that the statement satisfies the requirements provided by law, the director, after all fees have been paid shall:

(1) Stamp the word "Filed" on the statement and the date of the filing;
(2) File the document in the director's office; and
(3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the director, the conversion shall be deemed abandoned and shall not be effective.

§415B-B Articles of conversion. (a) If a plan of conversion has been approved in accordance with section 415B-83 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

(1) A statement certifying the following:
  (A) The name, state, or country of incorporation, formation, or organization of the converting entity, and organizational form of the converting entity;
  (B) That a plan of conversion has been approved;
  (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
  (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any member or director, as the case may be, of the converting entity or the converted entity;

  and
(2) If the converting entity is a domestic or foreign corporation or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. If the converted entity is a domestic corporation the articles of incorporation shall also be delivered to the director with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

(1) Stamp the word "Filed" on the articles of conversion and the date of the filing;
(2) File the document in the director's office; and
(3) Issue a certificate of conversion to the converted entity or its authorized representatives.

§415B-C Effective date of the conversion. Upon the issuance of the certificate of conversion by the director, the conversion shall be effective.

§415B-D Effect of conversion. When a conversion becomes effective:

(1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
(2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;

(3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
(4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
(5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
(6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership in the converted entity, as provided in the plan of conversion, shall be converted; and
(7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
    (A) Agreed in writing to be liable for such debts or obligations;
    (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
    (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity."

SECTION 4. Chapter 425, Hawaii Revised Statutes, is amended by adding four new sections to part VI to be appropriately designated and to read as follows:

"**§425-A Conversion into and from partnerships or limited liability partnerships.** (a) A domestic partnership or limited liability partnership may adopt a plan of conversion and convert to a foreign partnership, limited liability partnership, or any other entity if:
(1) The domestic partnership or limited liability partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections 425-191 and 428-904 to 428-906 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
(2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
(3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
(4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign partnership, limited liability partnership, or other entity may adopt a plan of conversion and convert to a domestic partnership or limited liability partnership if the conversion is permitted by and complies with the laws of the state or country in which the foreign partnership, limited liability partnership, or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:
(1) The name of the converting entity and the converted entity;

(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;
(4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof;
(5) If the converted entity is a domestic partnership or limited liability partnership, the registration statement of the domestic partnership or limited liability partnership shall be attached; and
(6) If the converted entity is not a domestic partnership, or limited liability partnership, proof that the converted entity is registered in this State shall be attached.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial partnership or limited liability partnership agreement of the converted entity if the converted entity is a partnership or limited liability partnership.

§425-B Articles of conversion. (a) If a plan of conversion has been approved in accordance with the section 425-A and has not been abandoned, articles of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

(1) A statement certifying the following:
(A) The name, state, or country of incorporation, formation, or organization of the converting entity and the organizational form of the converting entity;
(B) That a plan of conversion has been approved in accordance with section 425-A;
(C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
(D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion on written request and without cost, to any partner, shareholder, owner, or member of the converting entity or the converted entity;
and
(2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director.

(c) If the converted entity is a domestic partnership, the registration statement of the domestic partnership or limited liability partnership shall also be delivered to the director with the articles of conversion.

§425-C Effective date of the conversion. Upon the issuance of a certificate of conversion by the director, the conversion shall be effective.

§425-D Effect of conversion. When a conversion becomes effective:

(1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;

(2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
(3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
(4) The rights of creditors of the converting party shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
(5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity, without any need for substitution of parties;
(6) The partnership interests, and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;
(7) A shareholder, partner, member, or other owner of the converted entity, shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
    (A) Agreed in writing to be liable for such debts or obligations;
    (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
    (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
(8) If the converted entity is a foreign partnership, limited liability partnership, or other entity, the converted entity shall appoint a resident of the State as its agent, for service of process in a proceeding to enforce any obligation or rights of dissenting partners of the converting domestic partnership or limited liability partnership; and
(9) If the converting partnership is a domestic partnership, or limited liability partnership, section 425-191 shall apply as if the converted entity were the survivor of a merger with the converting entity."

SECTION 5. Chapter 425D, Hawaii Revised Statutes, is amended by adding four new sections to article 11 to be appropriately designated and to read as follows:

"**§425D-A Conversion into or from limited partnerships.** (a) A domestic limited partnership may adopt a plan of conversion and convert to a foreign limited partnership or any other entity if:
(1) The domestic limited partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections 425-191 and 428-904 to 428-906, as if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
(2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
(3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder,

partner, member, owner, or other security holder of, the converted entity; and

(4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign limited partnership or other entity may adopt a plan of conversion and convert to a domestic limited partnership if the conversion is permitted by and complies with the laws of the state or country in which the foreign limited partnership or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

(1) The name of the converting entity and the converted entity;

(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof;

(5) If the converted entity is a domestic limited partnership, the certificate of limited partnership shall be attached; and

(6) If the converted entity is not a domestic limited partnership, proof that the converted entity is registered in this State shall be attached.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial partnership agreement of the converted entity.

§425D-B Articles of conversion. (a) If a plan of conversion has been approved in accordance with the section 425D-A and has not been abandoned, articles of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

(1) A statement certifying the following:

(A) The name, state, or country of incorporation, formation, or organization of the converting entity, and the organizational form of the converting entity;

(B) That a plan of conversion has been approved in accordance with section 425D-A;

(C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof;

(D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion, on written request and without cost, to any limited partner of the converting entity or the converted entity; and

(2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized;

(b) The articles of conversion shall be delivered to the director.

(c) If the converted entity is a domestic limited partnership, the certificate of limited partnership shall also be delivered to the director with the articles of conversion.

§425D-C Effective date of the conversion. Upon the issuance of a certificate of conversion by the director, the conversion shall be effective.

§425D-D Effect of conversion. When a conversion becomes effective:

(1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;

(2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;

(3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;

(4) The rights of creditors of the converting party shall continue against the converted party and shall not be impaired or extinguished by the conversion;

(5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;

(6) The partnership interests and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;

(7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
   (A) Agreed in writing to be liable for such debts or obligations;
   (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
   (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;

(8) If the converted entity is a foreign limited partnership or other entity, the converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting limited partners of the converting domestic limited partnership; and

(9) If the converting partnership is a domestic limited partnership, section 425D-1109 shall apply as if the converted entity were the survivor of a merger with the converting entity.''

SECTION 6. Chapter 428, Hawaii Revised Statutes, is amended by adding two new sections to part IX to be appropriately designated and to read as follows:

''§428-A Conversion into and from limited liability companies. (a) A domestic limited liability company may adopt a plan of conversion and convert to a foreign limited liability company or any other entity if:

(1) The domestic limited liability company acts on and its members approve a plan of conversion in the manner prescribed by sections 428-904 to 428-906 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;

(2) The conversion is permitted by, and complies with, the laws of the state or country in which the converted entity is to be incorporated, formed,

or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;

(3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by that member, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;

(4) The members of the domestic limited liability company shall not, as a result of the conversion, become personally liable without the members' consent, for the liabilities or obligations of the converted entity; and

(5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign limited liability company or other entity may adopt a plan of conversion and convert to a domestic limited liability company if the conversion is permitted by and complies with the laws of the state or country in which the foreign corporation is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

(1) The name of the converting entity and the converted entity;

(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof;

(5) If the converted entity is a domestic limited liability company the articles of organization of the domestic limited liability company shall be attached; and

(6) If the converted entity is not a domestic limited liability company, proof that the converted entity is registered in this State shall be attached.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After a conversion of a limited liability company is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the converting entity without member action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan of conversion, in the manner determined by the members. If articles of conversion have been filed with the director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the director prior to the effective date of the conversion. If the director finds that the statement satisfies the requirements provided by law, the director, after all fees have been paid shall:

(1) Stamp the word "Filed" on the statement and the date of the filing;

(2) File the document in the director's office; and

(3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the director, the conversion shall be deemed abandoned and shall not be effective.

§428-B Articles of conversion. (a) If a plan of conversion has been approved in accordance with section 428-A and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity by and shall set forth:

(1) A statement certifying the following:
   (A) The name, state, or country of incorporation, formation, or organization of the converting entity, and organizational form of the converting entity;
   (B) That a plan of conversion has been approved;
   (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
   (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any member, shareholder, partner, or owner of the converting entity or the converted entity;
(2) If the converting entity is a domestic limited liability company, the total number of authorized votes, and the number voted for and against the plan; and
(3) If the converting entity is a foreign limited liability company or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. If the converted entity is a domestic limited liability company the articles of organization of the domestic limited liability company, shall also be delivered to the director with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

(1) Stamp the word "Filed" on the articles of conversion and the date of the filing;
(2) File the document in the director's office; and
(3) Issue a certificate of conversion to the converted entity or its authorized representatives."

SECTION 7. Section 415-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Other entity" includes a domestic or foreign non-profit corporation, limited liability company, general partnership, limited partnership, limited liability partnership, or a domestic professional corporation.</u>"

SECTION 8. Section 415A-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Other entity" includes a domestic or foreign corporation, whether organized for profit or not, a domestic or foreign limited liability company, general partnership, limited partnership, or limited liability partnership.</u>"

SECTION 9. Section 415B-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""Other entity" includes a domestic or foreign corporation, whether organized for profit or not, a domestic or foreign limited liability company, general partnership, limited partnership, limited liability partnership, or a domestic professional corporation."

SECTION 10. Section 425-152, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""Other entity" includes a domestic or foreign corporation, whether organized for profit or not, a domestic or foreign limited partnership, limited liability company, or domestic professional corporation."

SECTION 11. Section 425D-101, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""Other entity" includes a domestic or foreign corporation, whether organized for profit or not, a domestic or foreign partnership, limited liability partnership, limited liability company, or a professional corporation."

SECTION 12. Section 428-901, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""Other entity" includes a foreign or domestic corporation, whether organized for profit or not, a domestic or foreign partnership, limited partnership, limited liability partnership, or a domestic professional corporation."

SECTION 13. Section 415-128, Hawaii Revised Statutes, is amended to read as follows:

"**§415-128 Fees for filing documents and issuing certificates.** (a) The following fees shall be paid to the director upon the filing of corporate documents:

(1) Articles of incorporation, $100;
(2) Articles of amendment, $50;
(3) Restated articles of incorporation, $50;
(4) Articles of conversion, merger, or consolidation, $200;
(5) Articles of merger (subsidiary corporation), $100;
(6) Articles of dissolution, $50;
(7) Annual report of domestic and foreign corporations organized for profit, $25;
(8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, $50;
(9) Application for a certificate of authority, $100;
(10) Application for a certificate of withdrawal, $50;
(11) Reservation of corporate name, $20;
(12) Transfer of reservation of corporate name, $20;
(13) Good standing certificate, $25;
(14) Special handling fee for review of corporation documents, excluding articles of conversion, merger, or consolidation, $50;
(15) Special handling fee for review of articles of conversion, merger, or consolidation, $150;
(16) Special handling fee for certificates issued by the department, $20 per certificate; and
(17) Special handling fee for certification of documents, $1 per page.

(b) All special handling fees shall be credited to the special fund established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.

(c) The director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91 to ensure that the proceeds, together with all other receipts of the special fund under this section do not surpass the annual operating costs of the program. All unexpended and unencumbered moneys remaining on balance with the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the processing of corporate documents over the next following fiscal year shall lapse to the credit of the state general fund."

SECTION 14. Chapter 415B, Hawaii Revised Statutes, is amended by amending the title of part IV to read as follows:

"**PART IV.**
MERGERS [AND], CONSOLIDATIONS, AND CONVERSIONS"

SECTION 15. Section 415B-155, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-155 Fees for filing documents and issuing certificates.** (a) The following fees shall be paid to the director upon the filing of corporate documents:

(1) Articles of incorporation, $50;
(2) Articles of amendment, $20;
(3) Restated articles of incorporation, $20;
(4) Articles of merger or consolidation, $100;
(5) Articles of conversion, $200;
(6) Articles of dissolution, $20;
[(6)] (7) Annual report of nonprofit domestic and foreign corporations, $5;
[(7)] (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, $20;
[(8)] (9) Application for a certificate of authority, $50;
[(9)] (10) Application for a certificate of withdrawal, $20;
[(10)] (11) Reservation of corporate name, $20;
[(11)] (12) Transfer of reservation of corporate name, $20;
[(12)] (13) Good standing certificate, $20;
[(13)] (14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, $50;
[(14)] (15) Special handling fee for review of articles of conversion, merger, or consolidation, $150;
[(15)] (16) Special handling fee for certificates issued by the department, $20 per certificate; and
[(16)] (17) Special handling fee for certification of documents, $1 per page.

(b) All special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund."

SECTION 16. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

"**§425-12 Fee for filing documents and issuing certificates.** (a) The following fees shall be paid to the director upon the filing of general partnership documents:

(1) Partnership registration statement, $25;
(2) Partnership change of name statement, $25;
(3) Partnership dissolution statement, $25;
(4) Foreign general partnership registration statement, $25;
(5) Statement of change, $25;
(6) Application of certificate of withdrawal, $10;
(7) Statement of correction, $25;
(8) Reservation of name, $20;
(9) Transfer of reservation of name, $20;
(10) Annual statement for domestic or foreign general partnership, $10;
(11) Good standing certificate, $25;
(12) Articles of conversion, $200:
[(12)] (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, $25;
[(13)] (14) Special handling fee for review of any general partnership document, $20;
[(14)] (15) Special handling fee for certificates issued by the director, $20 per certificate; [and]
[(15)] (16) Special handling fee for certification of documents, $1 per page[.]; and
(17) Special handling fee for review of articles of conversion, $150.

(b) All special handling fees shall be credited to the special fund authorized by section 415-128."

SECTION 17. Section 425-169, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§425-169[]] Fee for recording.** (a) The director shall collect the following fees for documents filed under this part:

(1) For each change of partnership name or statement of dissolution filed, a fee of $5 per partner, subject to a maximum fee of $5,000;
(2) For each annual statement filed, a fee of $50;
(3) For each limited liability partnership registered, a fee of $100 for each partner, subject to a maximum fee of $10,000;
(4) For each foreign limited liability partnership registered, a fee of $1,000 if the partnership has fewer than ten partners; $5,000 if the partnership has ten or more but fewer than fifty partners; and $10,000 if the partnership has fifty or more partners;
(5) For each reservation or transfer of limited liability partnership name, a fee of $100;
(6) For each certificate of correction or certificate of amendment, a fee of $100;
(7) For each certificate of good standing, a fee of $100;
(8) For review of articles of conversion, a fee of $200;
[(8)] (9) For any other certificate, statement, or document, a fee of $100; and
[(9)] (10) For each certification of domestic or foreign partnership, a fee of $100.

(b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:

(1) For limited liability partnerships: certificate of limited liability partnership, $100; certificate of correction, $100; change of name statement,

$100; partnership dissolution statement, $100; annual statement, $100; certification of limited liability partnership, $1 a page; certificate of good standing, $100; articles of conversion, $150;

(2) For foreign limited liability partnerships: registration statement, $100; certificate of correction, $100; withdrawal application, $100; annual statement, $100; certification of foreign partnership, $1 a page; certificate of good standing, $100; filing articles of conversion, $150; and

(3) For any other certificate or document authorized by this part, $100.

(c) All special handling fees shall be credited to the special fund authorized by section 415-128. All other fees collected under this section shall be managed in accordance with section 26-9(l)."

SECTION 18. Section 425-191, Hawaii Revised Statutes, is amended to read as follows:

"[[]§425-191[]] **Merger [or conversion] of domestic general and limited liability partnerships.** One of[2] more domestic general and limited liability partnerships may be [converted into or] merged with a domestic limited liability company pursuant to [section 428-902 or] sections 428-904 to 428-906[, as the case may be]."

SECTION 19. Section 425D-1107, Hawaii Revised Statutes, is amended to read as follows:

"**§425D-1107 Fees for filing documents and issuing certificates.** (a) The following fees shall be paid to the director upon the filing of limited partnership documents:

(1) Certificate of limited partnership, $50;
(2) Any certificate of amendment, restatement, or correction, $20;
(3) Certificate of cancellation, $20;
(4) Annual statement for domestic or foreign limited partnership, $10;
(5) Any other certificate or document of domestic or foreign limited partnership, $20;
(6) Application for registration as a foreign limited partnership, $100;
(7) Any certificate of amendment or agent change for foreign limited partnership, $20;
(8) Application for certificate of withdrawal of foreign limited partnership, $20;
(9) Reservation of name, $20;
(10) Transfer of reservation of name, $20;
(11) Good standing certificate, $20;
(12) Filing articles of conversion, $200;
(13) Special handling fee for review of articles of conversion, $150;
[(12)] (14) Special handling fee for review of any limited partnership document, $50;
[(13)] (15) Special handling of fee for certificates issued by the director, $20 per certificate; and
[(14)] (16) Special handling fee for certification of documents, $1 per page.

(b) All special handling fees shall be credited to the special fund authorized by section 415-128."

SECTION 20. Section 425D-1109, Hawaii Revised Statutes, is amended to read as follows:

"[[]§425D-1109[]] **Merger [or conversion] of domestic limited partnerships.** One or more domestic limited partnerships may be [converted into or] merged with a domestic limited liability company pursuant to [section 428-902 or] sections 428-904 to 428-906[, as the case may be]."

SECTION 21. Section 428-903, Hawaii Revised Statutes, is amended to read as follows:

"[[]§428-903[]] **Effect of conversion[; entity unchanged].** [(a) A general partnership or limited partnership that has been converted to a limited liability company pursuant to section 428-902 shall be considered the same legal entity that existed prior to the conversion, the only change shall be the form in which the legal entity now exists.

(b) When the conversion takes effect:

(1) All property owned by the converting general partnerships or limited partnerships is vested in the limited liability company;

(2) All debts, liabilities, and other obligations of the converting general partnership or limited partnership continue as obligations of the limited liability company;

(3) Any action or proceeding pending by or against the converting general partnership or limited partnership may be continue[3] as if the conversion had not occurred and the limited liability company may be substituted as a party to the actions[4] or proceeding;

(4) Except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting general partnership or limited partnership are vested in the limited liability company; and

(5) Except as otherwise provided in the agreement of the conversion under section 428-902(c), all of the partners of the converting general partnership or limited partnership shall continue as members of the limited liability company.]

(a) When a conversion becomes effective:

(1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;

(2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;

(3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;

(4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;

(5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;

(6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, or other securities in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic limited liability company, the members of the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 415-80;

(7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
   (A) Agreed in writing to be liable for such debts or obligations;
   (B) Was liable under applicable law prior to the effective date of the conversion, for such debts or obligations; or
   (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
(8) If the converted entity is a foreign limited liability company or other entity, such converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members of the converting domestic limited liability company; and
(9) If the converting entity is a domestic limited liability company, section 428-907 shall apply as if the converted entity were the survivor of a merger with the converting entity.

(b) Upon the issuance of the certificate of conversion by the director, the conversion shall be effective."

SECTION 22. Section 428-908, Hawaii Revised Statutes, is amended to read as follows:

"[[]§428-908[]] **Notice of conversion or merger of partnership or limited partnership.** A partnership or limited partnership which intends to be converted to a limited liability company pursuant to [sections 428-902 and] section 428-903 or [which] that intends to be party to a merger into a limited liability company pursuant to sections 428-905 to 428-907, shall:
(1) Publish, once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State, notice thereof to the public[,]; and
(2) Make reasonable efforts to give notice thereof in a reasonable manner to persons with whom the partnership or limited partnership expects to have a continuing business relationship as of the time of the conversion or merger. A partnership or limited partnership which determines in a reasonable manner the persons to whom such notice is given shall be in compliance with this section even if notice is not received by all persons with whom the partnership or limited partnership conducted business prior to the conversion or merger or by all persons with whom the limited liability company conducts business after the conversion."

SECTION 23. Section 428-1301, Hawaii Revised Statutes, is amended to read as follows:

"**§428-1301 Fees.** (a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:
(1) Articles of organization, $100;
(2) Articles of amendment, $50;
(3) Restated articles of organization, $50;
(4) Articles of merger[,] or conversion, $200;
(5) Statement of dissociation, $50;
(6) Articles of termination, $50;
(7) Application for reinstatement for administratively terminated limited liability company, $50;

(8) Annual report, $25;
(9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, $50;
(10) Statement of resignation of agent for service of process, $50;
(11) Any other statement or document of a domestic or foreign limited liability company, $50;
(12) Application for certificate of authority for foreign limited liability company, $100;
(13) Application for cancellation of authority of foreign limited liability company, $50;
(14) Reservation of name, $25;
(15) Good standing certificate, $25;
(16) Any other record not otherwise covered in this part, $50;
(17) Certified copy of any record relating to a limited liability company or foreign limited liability company, 25 cents per page, and $10 for the certificate and affixing the seal thereto;
(18) Special handling fee for review of any record other than articles of merger[,] or conversion, $80;
(19) Special handling fee for review of articles of merger[,] or conversion, $200;
(20) Special handling fee for certificates issued by the director not otherwise covered by this part, $10 per certificate;
(21) Special handling fee for certification of record, $1 per page; and
(22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, $50, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

(b) All special handling fees shall be credited to the special fund authorized by section 415-128."

SECTION 24. Section 428-902, Hawaii Revised Statutes, is repealed.

SECTION 25. In codifying the new sections added by sections 1, 2, 3, 4, 5, and 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated in this Act.

SECTION 26. Statutory material to be repealed is bracketed. New statutory material is underscored.[5]

SECTION 27. This Act shall take effect on July 1, 2000.

(Approved July 6, 1999.)

Notes

1. Prior to amendment "for" appeared here.
2. Prior to amendment "or" appeared here.
3. Prior to amendment "continued" appeared here.
4. Prior to amendment "action" appeared here.
5. Edited pursuant to HRS §23G-16.5.

ACT 281 H.B. NO. 1257

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Wellness Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility and thereby serves the public.

The legislature further finds that Pacific Wellness Center, Inc., is engaged in the planning, design, and construction of a patient-focused facility. The health focus of Pacific Wellness Center, Inc., would be on the Hawaiian healing arts, medicinal plants, and also include an Institute of Acupuncture.

The legislature further finds that Pacific Wellness Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $5,000,000 in one or more series for the purpose of assisting Pacific Wellness Center, Inc., a not-for-profit Hawaii corporation, or a Hawaii nonprofit affiliate of same, with financing one or more of the following:

(1) Acquisition or leasing of land for a new facility;
(2) Planning, design, construction, and operation of a new health care facility; and
(3) Acquisition and installation of additional capital equipment for use in connection with Pacific Wellness Center, Inc., facilities.

The legislature finds and determines that the activities and facilities of Pacific Wellness Center, Inc., and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 282 S.B. NO. 1036

A Bill for an Act Relating to Persons with Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that when the commission on persons with disabilities, the Hawaii state coordinating council on deafness, and the architectural access committee were established by statute in 1978, 1987, and 1989, respectively, the State of Hawaii and the nation as a whole were on the verge of establishing laws to provide civil rights protections for persons with disabilities. This was successfully accomplished during the time span from 1974 to 1990 with the passage of the Rehabilitation Act and the Americans with Disabilities Act. During that period, many other federal civil rights laws were enacted or amended including the Individuals with Disabilities Education Act, formerly the Education for All Handicapped Children Act, the Federal Fair Housing Amendments Act, the Air Carrier Access Act, the Architectural Barriers Act, the Telecommunications Act, and the Uniform Systems for Handicapped Parking Act. Laws in the State of Hawaii were also enacted to mirror or exceed some of the same protections that were provided at the federal level. Throughout the nation, executive bodies such as "commissions," "councils," and "committees" were created primarily to advocate for the creation of laws. The legislature further finds that as the climate has shifted from creating laws to complying with laws, so must organizational structures change.

The purpose of this Act is to reorganize the commission on persons with disabilities, the Hawaii state coordinating council on deafness, and the architectural access committee to provide for more efficient coordination of state efforts to comply with disability access and civil rights laws through outreach and voluntary compliance by establishing the disability and communication access board. A reorganized structure will consolidate rulemaking responsibilities for facility accessibility guidelines, communication access guidelines, and handicapped parking rules, and will provide the administrative structure for other technical assistance and voluntary compliance functions. Current enforcement functions will not be affected.

This Act also acknowledges changes in functions that have resulted from the loss of thirty per cent funding over the past five years.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
DISABILITY AND COMMUNICATION ACCESS BOARD

§ **-1 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Board" means the disability and communication access board.

"Members" means the members of the disability and communication access board.

§ **-2 Disability and communication access board.** There is established a disability and communication access board within the department of health for

administrative purposes, to be composed of seventeen members to be appointed by the governor for staggered terms pursuant to section 26-34. The members of the board shall include at least nine persons with various types of disabilities, or parents or guardians of persons with disabilities. Other members shall include individuals knowledgeable in areas for which the board has rulemaking authority. The members appointed shall include at least one resident from each of the counties of Honolulu, Hawaii, Maui, and Kauai.

The members shall serve without compensation, but shall be reimbursed their necessary and reasonable expenses incurred in the performance of their duties, including travel expenses.

§ **-3 Duties and functions of the board.** The board shall perform the following duties and functions:

(1) Establish guidelines for the design of buildings and facilities by or on behalf of the State and counties in accordance with section 103-50;

(2) Provide review and recommendations on all state and county plans for buildings and facilities, in accordance with section 103-50;

(3) Establish guidelines for the utilization of communication access services provided for persons who are deaf, hard-of-hearing, or deaf-blind in state programs and activities. Guidelines include, but are not limited to, determining the qualifications of interpreters who may provide services, the amount of payment to interpreters, and the credentialling of interpreters who do not hold national certification via a state screening process;

(4) Administer the statewide program for parking for disabled persons, in accordance with part III of chapter 291;

(5) Serve as public advocate of persons with disabilities by providing advice and recommendations on matters relating to access for persons with disabilities, with emphasis on legislative matters, administrative rules, policies, and procedures of the state and county governments;

(6) Review and assess the problems and needs relating to access for persons with disabilities in the State in order to provide recommendations in the improvement of laws and services;

(7) Serve as the designated state agency to coordinate the efforts of the State to comply with the requirements of the Americans with Disabilities Act for access to services, employment, telecommunications, and facility and site design;

(8) Provide technical assistance and guidance to, but not limited to, state and county entities in order to meet the requirements of state, federal, and county laws providing for access for persons with disabilities through public education programs and other voluntary compliance efforts; and

(9) Administer funds allocated for its work, including disbursement and allocation of funds that may be available from public and private sources; provided that such disbursement and allocation shall be consistent with the specific requirements and purposes of this chapter.

§ **-4 Annual report.** The board shall report on its activities to the governor and the legislature at the end of each fiscal year, and may include recommendations consistent with the purposes of this chapter.

§ **-5 Staff.** The board may hire an executive director, who may hire staff to assist in the performance of the board's duties. The staff shall be hired without

regard to chapters 76 and 77; provided that the executive director and staff shall be eligible for participation in state employee benefit plans.

§ **-6 Rules.** The board may adopt rules pursuant to chapter 91, to implement this chapter, section 103-50, and part III of chapter 291."

SECTION 3. Section 103-50, Hawaii Revised Statutes, is amended to read as follows:

"**§103-50 Building design to consider needs of persons with disabilities.** (a) Notwithstanding any other law to the contrary, all plans and specifications for the construction of public buildings [and], facilities [by the State or any county, or on behalf of the State or any county subject to this chapter], and sites shall be prepared so that the buildings [and], facilities, and sites are accessible to and usable by persons with disabilities. The buildings [and], facilities, and sites shall conform to the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. [Pt.] part 1191, as adopted and amended by the [architectural access committee.] disability and communication access board under chapter .

(b) All state and county agencies subject to this section shall seek advice and recommendations from the [commission on persons with disabilities] disability and communication access board on any construction plans[.] prior to commencing with construction.

(c) The disability and communication access board shall adopt rules pursuant to chapter 91 for the design of buildings and facilities by or on behalf of the State and counties to effectuate the purposes of this section, except that the board, without regard to chapter 91, instead, may adopt federal amendments to the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. part 1191.

(d) The board may approve a site specific alternate design when an alternate design provides equal or greater access.

(e) For the purposes of this section, "public buildings, facilities, and sites" means buildings, facilities, and sites that:

(1) Are designed, constructed, purchased, or leased with the use of any federal, state, or county funds;

(2) House state or county programs, services, or activities that are intended to be accessed by the general public; or

(3) Are constructed on state or county lands or lands that will be transferred to the state or a county."

SECTION 4. Section 201G-344, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§201G-344[]] Rules.** The corporation, in consultation with the [commission on persons with disabilities,] disability and communication access board, shall adopt rules in accordance with chapter 91 with respect to the administration of this program and the fund, including but not limited to rules concerning income eligibility, certification of medical necessity, and degree of physical disability."

SECTION 5. Section 291-51, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"'"Disability and communication access board" means the disability and communication access board established by chapter .'"

SECTION 6. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

"**§291-52 Issuance of removable windshield placard.** Each county may issue one distinguishing placard to each disabled person who so requests and presents a certificate of disability. The removable windshield placard shall be designed, fabricated, and sold [at cost] to the counties at a rate negotiated by the [department of transportation.] disability and communication access board. The county may charge a fee to cover its costs."

SECTION 7. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

"**§291-56 Rules.** The [department of transportation] disability and communication access board may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance, renewal, revocation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates, reciprocity, the replacement of lost or stolen placards, the design of the placard and special license plates, signage and marking of parking spaces, and penalties."

SECTION 8. Section 103-50.5, Hawaii Revised Statutes, is repealed.

SECTION 9. Chapter 347D, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 348E, Hawaii Revised Statutes, is repealed.

SECTION 11. All rights, powers, functions, and duties of the commission on persons with disabilities, the Hawaii state coordinating council on deafness, and the architectural access committee are transferred to the disability and communication access board.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

SECTION 12. All rules, policies, procedures, guidelines, and other material adopted or developed by the commission on persons with disabilities, the Hawaii state coordinating council on deafness, the architectural access committee, or the department of transportation to implement provisions of the Hawaii Revised Statutes which are made applicable to the disability and communication access board by this Act, shall remain in full force and effect until amended or repealed by the disability and communication access board pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the commission on persons with disabilities, the Hawaii state coordinating council on deafness, the architectural access committee, or the department of transportation in those rules, policies, procedures, guidelines, and other material is amended to refer to the disability and communication access board as appropriate.

SECTION 13. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the commission on persons with disabilities, the Hawaii state coordinating council on deafness, the architectural access committee, or the department of transportation, relating to the functions

transferred to the disability and communication access board shall be transferred with the functions to which they relate.

SECTION 14. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 15. This Act shall take effect on January 1, 2000; provided that sections 6 and 7 shall take effect on July 1, 2000.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 283 S.B. NO. 1124

A Bill for an Act Relating to the Code of Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 412:12-104, Hawaii Revised Statutes, is amended to read as follows:

"[[]§412:12-104[]] **Authority of out-of-state banks to establish interstate branches in Hawaii by merger.** (a) One or more Hawaii banks may enter into an interstate merger transaction with one or more out-of-state banks under this article, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Hawaii of a Hawaii bank that participated in the transaction, if the conditions and filing requirements of this article are met.

(b) [(1) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Hawaii state bank, or of all or substantially all of the branches of a Hawaii state bank, shall not be permitted under this article unless the Hawaii state bank shall have been in continuous operation, on the date of such acquisition, for a period of at least five years.

(2) For the purposes of paragraph (1), a Hawaii state bank chartered solely for the purpose of acquiring another Hawaii state bank is considered to have been in existence for the same period as the Hawaii state bank to be acquired, so long as it does not open for business at any time before the acquisition.

(3) The commissioner may waive the restriction in paragraph (1) in the case of a Hawaii state bank that is subject to, or is in danger of becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law.

(c)] Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Hawaii state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay a filing fee of $9,000, or a greater amount as the commissioner may establish by rule pursuant to chapter 91. The filing fee shall be nonrefundable. Any Hawaii state bank which is a party to an interstate merger transaction shall comply with part VI, article 3, of this chapter to the extent applicable, and with other applicable state and federal laws. If the resulting bank in the interstate merger transaction is an out-of-state state

bank, the director of commerce and consumer affairs shall not file the articles of merger until the out-of-state state bank has filed a confirmation in writing by the commissioner of compliance with this section. If the resulting bank in the interstate merger transaction is an out-of-state bank which is a national banking association, the resulting bank shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of compliance with this section.

[(d)] (c) Any out-of-state state bank which shall be the resulting bank in an interstate merger transaction involving a Hawaii bank shall confirm in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State and provide satisfactory evidence to the commissioner of compliance with applicable requirements of chapter 415 relating to foreign corporations."

SECTION 2. Section 412:12-105, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§412:12-105[] Prohibition of out-of-state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) An out-of-state bank that does not operate a branch in this State may not establish and operate a de novo branch in this State.

(b) An out-of-state bank that does not operate a branch in this State may not establish and operate a branch in this State through the acquisition of a branch.

(c) Notwithstanding subsection (b), the commissioner may approve the acquisition of a branch by an out-of-state bank in the case of a bank that is subject to, or is in danger of becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law or the law of the out-of-state bank's home state.] **Authority of out-of-state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) An out-of-state bank that does not operate a branch in this State and that meets the requirements of this article may establish and operate a branch in this State.

(b) An out-of-state bank that does not operate a branch in this State and that meets the requirements of this article may establish and operate a branch in this State through the acquisition of a branch.

(c) An out-of-state bank desiring to establish and operate a branch or to acquire and operate a branch in this State pursuant to this section shall provide to the commissioner written notice of the proposed transaction not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to establish or acquire the branch. The filing of the notice shall be accompanied by a filing fee of $9,000 or a greater amount as the commissioner may establish by rule pursuant to chapter 91. The filing fee shall be non-refundable.

(d) No branch of an out-of-state bank may be established or acquired in this State under this section, unless:

(1) The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State;

(2) The applicant provides to the commissioner satisfactory evidence of compliance with the applicable requirements of chapter 415 relating to foreign corporations; and

(3) The commissioner, acting within thirty days after receiving notice of an application under subsection (c), certifies to the responsible federal bank supervisory agency that the requirements of this article have been met."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect on January 1, 2001.

(Approved July 6, 1999.)

ACT 284 S.B. NO. 1512

A Bill for an Act Relating to the Uniform Partnership Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part IV, to read as follows:

"PART IV. UNIFORM PARTNERSHIP ACT GENERAL PROVISIONS

§425-101 Definition. As used in this part, unless the context otherwise requires:

"Business" includes every trade, occupation, and profession.

"Debtor in bankruptcy" means a person who is the subject of:

(1) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(2) A comparable order under federal, state, or foreign law governing insolvency.

"Director" means the director of commerce and consumer affairs.

"Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

"Foreign limited liability partnership" means a partnership that:

(1) Is formed under laws other than the laws of this State; and

(2) Has the status of a limited liability partnership under those laws.

"Limited liability partnership" means a partnership that has filed a certificate of limited liability partnership under section 425-153 and does not have a similar statement in effect in any other jurisdiction.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section 425-109, a predecessor law, or comparable law of another jurisdiction.

"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

"Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"Statement" means a registration or annual statement filed under section 425-1, a statement of correction filed under section 425-1.7, a statement of change filed under section 425-7, a statement of dissolution filed under section 425-9, a statement of denial filed under section 425-115, a statement of dissociation filed under section 425-136, an amendment, or any other document filed under this chapter.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

§425-102 Knowledge and notice. (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) Knows of it;

(2) Has received a notification of it; or

(3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

(1) Comes to the person's attention; or

(2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

§425-103 Effect of partnership agreement; nonwaivable provisions. (a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this part governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement shall not:

(1) Vary the rights and duties under section 425-105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under section 425-122(b);
(3) Eliminate the duty of loyalty under section 425-123(b) or 425-132(b)(3), but:
  (A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
  (B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
(4) Unreasonably reduce the duty of care under section 425-123(c) or 425-132(b)(3);
(5) Eliminate the obligation of good faith and fair dealing under section 425-123(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
(6) Vary the power to dissociate as a partner under section 425-131(a), except to require the notice under section 425-130(1) to be in writing;
(7) Vary the right of a court to expel a partner in the events specified in section 425-130(5);
(8) Vary the requirement to wind up the partnership business in cases specified in section 425-138(4), (5), or (6);
(9) Vary the law applicable to a limited liability partnership under section 425-161; or
(10) Restrict rights of third parties under this part.

§425-104 Supplemental principles of law. (a) Unless displaced by particular provisions of this part, the principles of law and equity supplement this part.

(b) If an obligation to pay interest arises under this part and the rate is not specified, the rate is that specified in section 478-2.

§425-105 Recording and notification of statements. (a) A certified copy of a statement that has been filed in the office of the director and recorded in the bureau of conveyances has the effect provided for recorded statements in this part. A recorded statement that is not a certified copy of a statement filed in the office of the director does not have the effect provided for recorded statements in this part.

(b) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

§425-106 Governing law. Except as otherwise provided in section 425-161, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

§425-107 Partnership subject to amendment or repeal of chapter. A partnership governed by this part is subject to any amendment to or repeal of this chapter.

NATURE OF PARTNERSHIP

§425-108 Partnership as entity. (a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a certificate of limited liability partnership under section 425-153.

§425-109 Formation of partnership. (a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this part, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this part.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(A) Of a debt by installments or otherwise;

(B) For services as an independent contractor or of wages or other compensation to an employee;

(C) Of rent;

(D) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(E) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(F) For the sale of the goodwill of a business or other property by installments or otherwise.

§425-110 Partnership property. Property acquired by a partnership is property of the partnership and not of the partners individually.

§425-111 When property is partnership property. (a) Property is partnership property if acquired in the name of:

(1) The partnership; or

(2) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) The partnership in its name; or

(2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

§425-112 Partner agent of partnership. Subject to the effect of a partnership registration statement under section 425-1:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

§425-113 Transfer of partnership property. (a) Partnership property may be transferred as follows:

(1) Subject to the effect of a partnership registration statement filed under section 425-1, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 425-112 and:

(1) As to a subsequent transferee who gave value for property transferred under subsection (a)(1) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

§425-114 Partnership registration statement. (a) A filed registration statement supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed registration statement is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in the filed registration statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed registration statement recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the bureau of conveyances of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed registration statement containing the limitation on authority is of record in the bureau of conveyances.

(c) Except as otherwise provided in subsections (a) and (b) and sections 425-136 and 425-142, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed registration statement.

§425-115 Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 425-114(a) and (b).

§425-116 Partnership liable for partner's actionable conduct. (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive

money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

§425-117 Partner's liability. (a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership.

§425-118 Actions by and against partnership and partners. (a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with section 425-117, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 425-117 and:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
(2) The partnership is a debtor in bankruptcy;
(3) The partner has agreed that the creditor need not exhaust partnership assets;
(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 425-119.

§425-119 Liability of purported partner. (a) If a person, by word or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership

liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

§425-120 Partner's rights and duties. (a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under section 425-112.

§425-121 Distributions in kind. A partner has no right to receive, and shall not be required to accept, a distribution in kind.

§425-122 Partner's rights and duties with respect to information. (a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this part; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

§425-123 General standards of partner's conduct. (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this part or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this part or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

§425-124 Actions by partnership and partners. (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) Enforce the partner's rights under this part, including:

(A) The partner's rights under section 425-120, 425-122, or 425-123;

(B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 425-133 or enforce any other right under sections 425-130 to 425-132 or sections 425-133 to 425-137; or

(C) The partner's right to compel a dissolution and winding up of the partnership business or enforce any other right under sections 425-138 to 425-144; or

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

§425-125 Continuation of partnership beyond definite term or particular undertaking. (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

TRANSFEREES AND CREDITORS OF PARTNER

§425-126 Partner not co-owner of partnership property. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

§425-127 Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

§425-128 Transfer of partner's transferable interest. (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(1) Is permissible;

(2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) To seek under section 425-138 a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

§425-129 Partner's transferable interest subject to charging order. (a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than partnership property, by one or more of the other partners; or

(3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This part does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

PARTNER'S DISSOCIATION

§425-130 Events causing partner's dissociation. A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's receipt of notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;
(3) The partner's expulsion pursuant to the partnership agreement;
(4) The partner's expulsion by the unanimous vote of the other partners if:
  (A) It is unlawful to carry on the partnership business with that partner;
  (B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
  (C) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed articles of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the articles of dissolution or no reinstatement of its charter or its right to conduct business; or
  (D) A partnership that is a partner has been dissolved and its business is being wound up;
(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:
  (A) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
  (B) The partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 425-123; or
  (C) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
(6) The partner's:
  (A) Becoming a debtor in bankruptcy;
  (B) Executing an assignment for the benefit of creditors;
  (C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
  (D) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
(7) In the case of a partner who is an individual:
  (A) The partner's death;
  (B) The appointment of a guardian or general conservator for the partner; or
  (C) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the

estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

§425-131 Partner's power to dissociate; wrongful dissociation. (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 425-130(1).

(b) A partner's dissociation is wrongful only if:

(1) It is in breach of an express provision of the partnership agreement; or

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(A) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 425-130(6) to (10) or wrongful dissociation under this subsection;

(B) The partner is expelled by judicial determination under section 425-130(5);

(C) The partner is dissociated by becoming a debtor in bankruptcy; or

(D) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it wilfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

§425-132 Effect of partner's dissociation. (a) If a partner's dissociation results in a dissolution and winding up of the partnership business, sections 425-138 to 425-144 apply; otherwise, sections 425-133 to 425-137 apply.

(b) Upon a partner's dissociation:

(1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 425-140;

(2) The partner's duty of loyalty under section 425-123(b)(3) terminates; and

(3) The partner's duty of loyalty under section 425-123(b)(1) and (2) and duty of care under section 425-123(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 425-140.

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

§425-133 Purchase of dissociated partner's interest. (a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 425-138, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 425-144(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were

wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under section 425-131(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 425-134.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) shall be accompanied by the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation;

(2) The latest available partnership balance sheet and income statement, if any;

(3) An explanation of how the estimated amount of the payment was calculated; and

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to section 425-124(b)(2), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

§425-134 Dissociated partner's power to bind and liability to partnership. (a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership is bound by an act of the dissociated partner which would have bound the partnership under section 425-112 before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner;
(2) Did not have notice of the partner's dissociation; and
(3) Is not deemed to have had knowledge under section 425-114(b) or notice under section 425-136(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).

§425-135 Dissociated partner's liability to other persons. (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership within two years after the partner's dissociation, only if the partner is liable for the obligation under section 425-117 and at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner;
(2) Did not have notice of the partner's dissociation; and
(3) Is not deemed to have had knowledge under section 425-114(b) or notice under section 425-136(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

§425-136 Statement of dissociation. (a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 425-114(a) and (b).

(c) For the purposes of sections 425-134(a)(3) and 425-135(b)(3), a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

§425-137 Continued use of partnership name. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

WINDING UP PARTNERSHIP BUSINESS

§425-138 Events causing dissolution and winding up of partnership business. A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 425-130(2) to (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;
(2) In a partnership for a definite term or particular undertaking:
  (A) Within ninety days after a partner's dissociation by death or otherwise under section 425-130(6) to (10) or wrongful dissociation under section 425-131(b), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to section 425-131(b)(2) constitutes the expression of that partner's will to wind up the partnership business;
  (B) The express will of all of the partners to wind up the partnership business; or
  (C) The expiration of the term or the completion of the undertaking;
(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;
(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;
(5) On application by a partner, a judicial determination that:
  (A) The economic purpose of the partnership is likely to be unreasonably frustrated;
  (B) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
  (C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or
(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
  (A) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
  (B) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

§425-139 Partnership continues after dissolution. (a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:
(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) The rights of a third party accruing under section 425-141(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

§425-140 Right to wind up partnership business. (a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, a court of competent jurisdiction for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 425-144, settle disputes by mediation or arbitration, and perform other necessary acts.

§425-141 Partner's power to bind partnership after dissolution. Subject to section 425-142, a partnership is bound by a partner's act after dissolution that:

(1) Is appropriate for winding up the partnership business; or

(2) Would have bound the partnership under section 425-112 before dissolution, if the other party to the transaction did not have notice of the dissolution.

§425-142 Statement of dissolution. (a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed registration for the purposes of section 425-114(a) and is a limitation on authority for the purposes of section 425-114(b).

(c) For the purposes of sections 425-112 and 425-141, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a registration statement which will operate with respect to a person not a partner as provided in section 425-114(a) and (b) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

§425-143 Partner's liability to other partners after dissolution. (a) Except as otherwise provided in subsection (b) and section 425-117, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 425-141.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 425-141(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

§425-144 Settlement of accounts and contributions among partners. (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are

creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 425-117.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 425-117. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 425-117.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 425-117.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

MISCELLANEOUS PROVISIONS

§425-145 Short title. This part may be cited as the Uniform Partnership Act."

SECTION 2. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

"**§425-1 Registration and annual statements.** Whenever any general partnership is formed under the laws of the State to do business in the State, or any general partnership formed under the laws of any other jurisdiction shall do business in the State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of the State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in the State. An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year. Every such registration statement shall contain the following information:

(1) The name of the partnership;

(2) The name and residence of each partner;

[(3) The nature of the partnership business;

(4)] (3) The [location] street address of the [principal place of business] chief executive office of the partnership in the State and, if the partnership is one formed under the laws of any other jurisdiction, the

name of the jurisdiction and the [location of the principal place of business] street address of the [partnership;] partnership's chief executive office and of one office in this State, if there is one;

[(5)] (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in the State;

[(6)] (5) The fact that none of the partners is either a minor or an incompetent person;

[(7)] (6) In the case of a foreign general partnership, the designation of a person residing within the State as agent for service of process and notice[.];

(7) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, and may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

Every such annual statement shall contain the information specified in paragraphs (1), (2), (3), (4), (6), and (7) [above] and a listing of the names of any partner admitted, withdrawn, or who has died during the year.

The registration statement of a domestic partnership shall be certified by each partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner."

SECTION 3. Section 425-9, Hawaii Revised Statutes is amended to read as follows:

"**§425-9 Statement of dissolution.** Whenever a domestic general partnership is dissolved, and the business is not continued [within the meaning of section 425-141(1), (3), (5), or (6)], a statement thereof showing the cause of dissolution shall be filed in the office of the director of commerce and consumer affairs within thirty days after dissolution. The statement shall be certified by all partners except in such cases as the circumstances make it obviously impossible to secure the signature of one or more partners, which circumstances shall be set forth in the statement."

SECTION 4. Section 425-166, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§425-166[]] Statement of dissolution.** Whenever a limited liability partnership is dissolved, and the business is not continued [within the meaning of section 425-141(1), (3), (5), or (6)], a statement thereof showing the cause of dissolution shall be filed in the office of the director within thirty days after dissolution. The statement shall be certified by all partners except in cases in which circumstances make it impossible to secure the signature of all partners, which circumstances shall be set forth in the statement."

SECTION 5. Chapter 425, Part IV, Hawaii Revised Statutes is repealed.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved July 6, 1999.)

ACT 285

H.B. NO. 1496

A Bill for an Act Relating to Deadly or Dangerous Weapons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§134- Butterfly knives; prohibitions; penalty.** (a) Whoever knowingly manufactures, sells, transfers, possesses, or transports in the State any butterfly knife, being a knife having a blade encased in a split handle that manually unfolds with hand or wrist action with the assistance of inertia, gravity or both, shall be guilty of a misdemeanor.

(b) Whoever knowingly possesses or intentionally uses or threatens to use a butterfly knife while engaged in the commission of a crime shall be guilty of a class C felony."

SECTION 2. Section 134-51, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person, not authorized by law, who carries concealed upon the person's self or within any vehicle used or occupied by the person or who is found armed with any dirk, dagger, [butterfly knife,] blackjack, slug shot, billy, metal knuckles, pistol, or other deadly or dangerous weapon shall be guilty of a misdemeanor and may be immediately arrested without warrant by any sheriff, police officer, or other officer or person. Any weapon, above enumerated, upon conviction of the one carrying or possessing it under this section, shall be summarily destroyed by the chief of police or sheriff."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 286

H.B. NO. 1497

A Bill for an Act Relating to Sentencing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§706- Repeat violent and sexual offender; enhanced sentence.** (1) Notwithstanding any other provision of law to the contrary, any person who is convicted of an offense under section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-733.5, 707-750, or 708-840, after having been convicted on at least three prior and separate occasions of an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.5, 707-750, or 708-840, or of an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.5, 707-750, or 708-840, shall be sentenced to an extended term of imprisonment as provided in section 706-661.

(2) A conviction shall not be considered a prior offense unless the conviction occurred within the following time periods:

(a) For an offense under section 707-701.5, 707-702, 707-730, 707-733.5, 707-750, or 708-840, within the past twenty years from the date of the instant offense;

(b) For an offense under section 707-710 or 707-731, within the past ten years from the date of the instant offense;

(c) For an offense under section 707-711 or 707-732, within the past five years from the date of the instant offense; or

(d) For an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.5, 707-750, or 708-840, within the maximum term of imprisonment possible under the appropriate jurisdiction."

SECTION 2. Section 706-661, Hawaii Revised Statutes, is amended to read as follows:

"**§706-661 Sentence of imprisonment for felony; extended terms.** In the cases designated in section 706-662, a person who has been convicted of a felony may be sentenced to an extended indeterminate term of imprisonment. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

(1) For murder in the second degree—life without the possibility of parole;

[(1)] (2) For a class A felony—[life;] indeterminate life term of imprisonment;

[(2)] (3) For a class B felony—[twenty years;] indeterminate twenty-year term of imprisonment; and

[(3)] (4) For a class C felony—[ten years.] indeterminate ten-year term of imprisonment.

The minimum length of imprisonment for sections 2, 3, and 4 shall be determined by the Hawaii paroling authority in accordance with section 706-669."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 287

H.B. NO. 1522

A Bill for an Act Relating to Real Property Appraisals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide that the requirements of chapter 466K, Hawaii Revised Statutes, do not apply to real estate appraisers employed by the counties for the purposes of ad valorem taxation.

SECTION 2. Section 466K-1, Hawaii Revised Statutes, is amended to read as follows:

"**§466K-1 Findings and purpose.** The legislature finds that the regulation of real estate appraisers is reasonably necessary to protect consumers. The legislature further finds that 12 United States Code §3301 et seq. requires that real estate appraisals utilized in connection with federally related transactions be performed by individuals who are certified appraisers. The purposes of this chapter are to implement the requirements of 12 United States Code §3301 et seq. and to require that all real estate appraisals be performed by licensed or certified appraisers. The requirements of this chapter do not apply to any real estate appraiser employed by any county for purposes of valuing real property for ad valorem taxation."

SECTION 3. Section 466K-4, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§466K-4[]] Practice as a real estate appraiser; uniform standards.** (a) No person may practice as a real estate appraiser in this State unless that person has been licensed or certified to practice in accordance with this chapter and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. All real estate appraisers who are licensed or certified to practice in this State shall comply with the current uniform standards of professional appraisal practice approved by the director when performing appraisals in connection with a federally or non-federally related real estate transaction.

(b) This section shall not apply to any real estate appraiser employed by any county for purposes of valuing real property for ad valorem taxation."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 288

H.B. NO. 1548

A Bill for an Act Relating to Wastewater Reuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many areas of Hawaii are blessed with an abundance of freshwater. With increasing demands on Hawaii's natural resources, however, the future sustainability of freshwater is of great concern. These increasing demands may soon outpace the available freshwater supply.

In other states where freshwater is in short supply, much attention is given to the reuse of wastewater through water recycling. The legislature finds that Hawaii should follow a similar path and encourage the use of recycled water, especially for agricultural and irrigation uses. Hawaii must proactively develop policies that encourage and support the reuse of treated wastewater effluent for beneficial purposes. State laws and rules need to be developed, amended, and clarified to encourage the reuse of water. Regulation and mitigation of possible health and environmental risks of recycling processed wastewater must be addressed. State laws and rules must also authorize the distribution and sale of recycled water and ensure that the cost of recycled water is reasonable, fair, and economically feasible for both the processor and water consumer.

SECTION 2. Section 342D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Recycled water" and "reclaimed water" mean treated wastewater that by design is intended or used for a beneficial purpose.</u>"

SECTION 3. The director of health shall give priority to adopting rules, in accordance with chapter 91, Hawaii Revised Statutes, to:

(1) Establish the definition and requirements of different categories of recycled water and reclaimed water; and
(2) Recognize different levels of water treatment and purpose.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 289

H.B. NO. 1594

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for an Intergenerational Care Center at Ewa Villages.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the EV Community Development Corporation is a private nonprofit organization that seeks to provide a continuum of health care services to frail elderly, and medically fragile infants and children at Kulana Malama, an intergenerational care center. The center is designed to:

(1) Integrate an intergenerational concept of services, both residential and day care, within a seven-and-a-half acre property; and

(2) Create a sense of belonging, warmth, and security in a nurturing environment.

Kulana Malama intends to provide the following:

(1) Pediatric skilled nursing care;
(2) Dementia/alzheimer unit, including day care for demented clients, with both indoor and outdoor wandering areas;
(3) Intergenerational day care for infants, toddlers, preschool, and frail elderly, with extended hours for working caregivers;
(4) Adult residential care/swing beds;
(5) Respite care for short stays;
(6) Caregiver training in early childhood development and geriatric care; and
(7) Varied community-based programs such as chore services, meal services, and case management.

The legislature further finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $15,000,000 in one or more series for the purpose of assisting the EV Community Development Corporation in financing and refinancing costs related to the acquisition, development, and construction of an intergenerational care center, Kulana Malama, that intends to provide health care services to frail elderly, medically fragile infants and children.

The legislature finds and determines that the activities and facilities of the EV Community Development Corporation at Kulana Malama constitute projects as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a health care facility provided to the general public by a nonprofit corporation.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 290 H.B. NO. 1595

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Waste Processing Enterprises.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is in the public interest to encourage the private development of one or more waste processing enterprises to convert waste materials into usable goods and remove these waste materials from the waste stream. The legislature further finds that Plasma Environmental Technologies is engaged in the development of a waste processing enterprise that will convert waste materials to usable goods, removing these materials from the waste stream.

The legislature further finds that Plasma Environmental Technologies may be assisted through the issuance of special purpose revenue bonds because waste processing enterprises process waste into usable materials and are therefore processing enterprises pursuant to part IV, chapter 39A, Hawaii Revised Statutes.

The legislature further finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed $60,000,000 for the purpose of assisting Plasma Environmental Technologies, or a partnership in which Plasma Environmental Technologies or a wholly-owned subsidiary of Plasma Environmental Technologies is a general partner, for the establishment of one or more waste processing facilities.

The legislature also finds and determines that the activities and facilities of Plasma Environmental Technologies constitute a project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to processing enterprises.

The legislature also finds and determines that the establishment of a waste processing facility on Kauai by Plasma Environmental Technologies may have a significant effect on the environment. If the waste processing facility on Kauai does not propose an action specified in section 343-5(a), Hawaii Revised Statutes, the department of budget and finance shall not issue any special purpose revenue bonds until an environmental impact statement is prepared and accepted on the waste processing facility in accordance with the other provisions of chapter 343, Hawaii Revised Statutes.

No waste processing facility on Kauai established through the financing provided by this Act shall process waste generated from any county except the county of Kauai.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 291 H.B. NO. 1616

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Women's Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility and thereby serves the public.

The legislature further finds that Pacific Women's Center, Inc., is engaged in the planning, design, and construction of a patient-focused facility. The Pacific Women's Center would consist primarily of a birthing center with postpartum, nursery, labor, and delivery services.

The legislature further finds that Pacific Women's Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $5,000,000 in one or more series for the purpose of assisting Pacific Women's Center, Inc., a not-for-profit Hawaii corporation, or a Hawaii nonprofit affiliate of same, with financing one or more of the following:

(1) Acquisition or leasing of land for a new facility;
(2) Planning, design, construction, and operation of a new health care facility; and
(3) Acquisition and installation of additional capital equipment for use in connection with Pacific Women's Center, Inc., facilities.

The legislature finds and determines that the activities and facilities of Pacific Women's Center, Inc. and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 292 H.B. NO. 1617

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Saging Center, Inc., a Hawaii nonprofit corporation, is engaged in the development of a health care facility and thereby serves the public.

The legislature further finds that Pacific Saging Center, Inc., is engaged in the planning, design, and construction of a patient-focused facility. The development would include such items and activities as:

(1) Saging center;
(2) Child care;
(3) Adult care;
(4) Mentoring programs; and
(5) Activity centers.

The legislature further finds that Pacific Saging Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $10,000,000, in one or more series, for the purpose of assisting Pacific Saging Center, Inc., a Hawaii nonprofit corporation, or a Hawaii nonprofit affiliate of same, with financing one or more of the following:

(1) Acquisition or leasing of land for a new facility;
(2) Planning, design, construction, and operation of a new health care facility; and
(3) Acquisition and installation of additional capital equipment for use in connection with Pacific Saging Center, Inc.'s facilities.

The legislature finds and determines that the activities and facilities of Pacific Saging Center, Inc., and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 293 H.B. NO. 1621

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Community Health & Wellness, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility and thereby serves the public.

The legislature further finds that Pacific Community Health & Wellness, Inc., is engaged in the planning, design, and construction of a patient-focused facility.

The legislature further finds that Pacific Community Health & Wellness, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature also finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $5,000,000 in one or more series for the purpose of assisting Pacific Community Health & Wellness, Inc., a not-for-profit Hawaii corporation, or a Hawaii nonprofit affiliate of that corporation, with financing one or more of the following:

(1) Acquisition or leasing of land for a new facility;
(2) Planning, design, construction, and operation of a new health care facility; or
(3) Acquisition and installation of additional capital equipment for use in connection with Pacific Community Health & Wellness, Inc., facilities.

The legislature finds and determines that the activities and facilities of Pacific Community Health & Wellness, Inc., and its affiliates constitute a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is of assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 294 H.B. NO. 1628

A Bill for an Act Relating to Agricultural Loans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State's diversified agriculture is at a critical juncture. Over the years, the State invested public funds for diversified agriculture research and development. This investment is now coming to fruition. With the closure of most of the State's sugar plantations, prime agricultural land, water, and an agriculturally oriented labor force are now available for agricultural development and expansion. One of the factors limiting further growth is the availability of financing at reasonable rates and terms.

The legislature recognizes that during this period of fiscal austerity, creativity is needed to provide assistance without expending scarce state funds. In order to achieve this end, new funding sources for agricultural loans need to be developed. This Act creates a program that enables cooperating lenders to provide loan funds with the department of agriculture providing counseling, credit underwriting, collection, and loan servicing.

SECTION 2. Chapter 155, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§155- Cooperation in loans by the department.** (a) The department of agriculture, for a fee, may underwrite and service loans for cooperating private lenders and government loan programs providing loan funds to qualified farmers. All fees shall be deposited into the agricultural loan reserve fund.

(b) Loans underwritten or serviced under this section shall not be subject to the restrictions in section 155-3.

(c) Loans underwritten or serviced under this section shall be limited by sections 155-1 and 155-9 to 155-12. No class "D" and "F" loans shall be underwritten or serviced under this section.

(d) Loans underwritten or serviced under this section shall bear simple interest on the unpaid principal balance charged on the actual amount disbursed to

the borrower. The interest rate on class "A", "B", "C", and "E" loans shall be at a rate of two per cent above the prime rate or at a rate of eight and one-half per cent a year, whichever is less. For purposes of this subsection, the prime rate shall be determined on January 1 and July 1 of each year and shall be the prime rate charged by the two largest banks in the State identified by the department of commerce and consumer affairs. If the prime rates of the two largest banks are different, the higher prime rate of the two shall apply.

The director of commerce and consumer affairs shall publish a notice statewide pursuant to section 1-28.5 to specify the prime rate.

(e) For loans underwritten or serviced under this section, funds shall be disbursed in accordance with rules adopted by the department pursuant to chapter 91.

(f) The department and the cooperating lender may charge a filing fee for any application made under this section. However, the applicant shall pay for any actual expenses incurred.

(g) The department and the cooperating lender may mutually agree on underwriting criteria, functions, responsibilities, and fees for loan underwriting and loan servicing, by way of a memorandum of agreement. The memorandum of agreement shall be approved by the chairperson of the board of agriculture."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 295 H.B. NO. 1649

A Bill for an Act Relating to the Conveyance Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

"**§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

(1) Any document or instrument [which] that is executed prior to January 1, 1967[.];

(2) Any document or instrument [which] that is given to secure a debt or obligation[.];

(3) Any document or instrument [which] that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed[.];

(4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid[.];

(5) Any document or instrument in which there is a consideration of $100 or less paid or to be paid[.];

(6) Any document or instrument conveying real property [which] that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided

that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale[.];

(7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto[.];

(8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments[.];

(9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain[.];

(10) Any document or instrument [which] that solely conveys or grants an easement or easements[.];

(11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition[.];

(12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship [which] that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship[.];

(13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust[.];

(14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust[.];

(15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 415, 415A, 415B, 421, 421C, or 428 to the surviving or new entity; and

(16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved July 6, 1999.)

ACT 296 H.B. NO. 1693

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage development of senior citizen lifecare retirement communities in the State of Hawaii. The legislature finds that the Honolulu Neighborhood Housing Services, Inc., a not-for-profit Hawaii corporation, is engaged in the development of senior citizen lifecare retirement communities and thereby serves the public.

The legislature further finds that the Honolulu Neighborhood Housing Services, Inc., may be assisted through the issuance of special purpose revenue bonds because this project is a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed $80,000,000 for the purpose of assisting the Honolulu Neighborhood Housing Services, Inc., a Hawaii not-for-profit corporation, in planning, designing, and constructing a senior citizen lifecare retirement community.

The legislature finds and determines that the planning, designing, and construction of a senior citizen lifecare retirement community constitutes a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit corporation that provides health care facilities to the general public.

SECTION 3. The department of budget and finance shall not issue special purpose revenue bonds authorized in section 2, until the Honolulu Neighborhood Housing Services, Inc.:

(1) Has obtained a certificate of need approval from the state health planning and development agency; and

(2) Is in compliance with laws, ordinances, and rules of the State or any political subdivision thereof, or any departments or boards thereof with respect to:
   (A) The construction, operation, and maintenance of projects;
   (B) Compliance with health care planning laws or regulations, or zoning laws or regulations, including obtaining building permits;
   (C) Compliance with building and health codes and other laws, ordinances, or rules of similar nature pertaining to the project; and
   (D) Requiring developers to share their project plans and solicit comments and concerns regarding such plans from surrounding residential and business communities.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 5. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in principal amounts that the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making such determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on the later of June 30, 2003, or the sunset date of section 39A-52, Hawaii Revised Statutes.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 297 S.B. NO. 889

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

PART I.

SECTION 1. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) No person who has been restrained pursuant to an order of any court, including an ex parte order as provided [for herein,] in this subsection, from contacting, threatening, or physically abusing any person, shall possess or control any firearm or ammunition therefor, so long as the protective order or any extension [thereof] is in effect, unless the order, for good cause shown, specifically permits the possession of a firearm and ammunition. The restraining order or order of protection shall specifically include a statement that possession or control of a firearm or ammunition by the person named in the order is prohibited. Such person shall relinquish possession and control of any firearm and ammunition owned by that person to the police department of the appropriate county for safekeeping for the duration of the order or extension thereof. In the case of an ex parte order, the affidavit or statement under oath [which] that forms the basis for the order shall contain a statement of the facts [which] that support a finding that the person to be restrained owns, intends to obtain, or possesses a firearm, and that the firearm may be used to threaten, injure, or abuse any person. The ex parte order shall be effective upon service pursuant to section 586-6. At the time of service of a restraining order involving firearms and ammunition issued by any court, the police officer may take custody of any and all firearms and ammunition in plain sight, those discovered pursuant to a consensual search, and those firearms surrendered by the person restrained. If the person restrained is the registered owner of a firearm and knows the location of the firearm but refuses to surrender the firearm or refuses to disclose the location of the firearm, the person restrained shall be guilty of a misdemeanor. In any case, when a police officer is unable to locate the firearms and ammunition either registered under this chapter or known to the person granted protection by the court, the police officer shall apply to the court for a search warrant pursuant to chapter 803 for the limited purpose of seizing the firearm and ammunition.

For the purposes of this subsection, good cause shall not be based solely upon the consideration that the person subject to restraint pursuant to an order of any court, including an ex parte order as provided for in this subsection, is required to possess or carry firearms or ammunition during the course of their employment. Good cause consideration may include, but not be limited to, the protection and safety of the person to whom a restraining order is granted."

SECTION 2. Section 134-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Sections 134-2 and 134-3 shall not apply to such firearms or ammunition that are a part of the official equipment of any federal agency. [Section 134-7(f) shall not apply when the persons described in subsection (a) are on duty if those duties require them to be armed.]"

Part II.

SECTION 3. Section 291C-161, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The court may assess a sum not to exceed [$25] $50 for the cost of issuing a penal summons upon any person who fails to appear at the place within the time specified in the citation issued to the person for any traffic violation."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 298

S.B. NO. 896

A Bill for an Act Relating to Guardianship Proceedings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 560:5-309, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Notice shall be served personally on the alleged incapacitated person, the person's spouse or reciprocal beneficiary, the person's legal parents, and the person's adult children, if they can be found within the State. Notice to [such] any of those who cannot be found within the State and to all other persons except the alleged incapacitated person shall be given as provided in section 560:1-401. For good cause, the court may waive notice to any person in subsection (a)(1) or (3), other than the ward, upon a showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest or concern in the

subject. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the individual sent by the family court to interview the person. Except as provided in section 560:5-303, representation of the alleged incapacitated person by a guardian ad litem is not necessary.

(c) Grandparents shall be notified in all proceedings involving minors. For good cause, the court may waive notice to a grandparent upon a showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest or concern in the subject."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved July 6, 1999.)

ACT 299 S.B. NO. 901

A Bill for an Act Relating to the Judiciary Computer System Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 203, Session Laws of Hawaii 1996, is amended by amending section 9 to read as follows:

"SECTION 9. This Act shall take effect on July 1, 1996[; provided that on June 30, 2000, this Act shall be repealed, and section 3 of this Act shall be reenacted in the form in which it read on the day before the approval of this Act]."

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 300 S.B. NO. 1003

A Bill for an Act Relating to Child Support Enforcement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the child support enforcement agency, despite a new computer system, is still criticized as slow and inefficient by the parents who use the system. More parents want the ability to opt out of the system, and thereby, have the obligor parent transmit the payment directly to the custodial parent.

Therefore, the purpose of this Act is to:

(1) Permit parents who are having problems getting a response from the child support enforcement agency to go to family court for a speedy resolution of their situation; and
(2) Establish a parallel mechanism whereby the Office of Child Support Hearings may allow for the direct payment of child support obligations.

SECTION 2. Chapter 580, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§580- Notice to parties with children.** When a party files for divorce and there are minor children involved, or when a party institutes a proceeding under chapter 576D or 576E, the court or the office of child support hearings shall provide notice to each party informing them of the opportunity to enter into an alternative arrangement for direct payment of child support under chapter 576D. A party may petition the court at any time, under chapter 576D or 576E, to opt out of the child support enforcement agency system and such a petition shall be assigned priority on the docket and be acted on expeditiously by the court."

SECTION 3. Section 576D-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The agency shall collect and disburse child support payments when an order requires the collection and disbursal. In the event of any default by the obligor, upon notification of the default by the custodial parent, the agency shall proceed against the obligor for the arrearage and the agency shall have jurisdiction over future child support payments.[1] Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment. The interest realized from this account shall be used [for]:

(1) For related costs of the maintenance and operation of the account; and [the]
(2) To improve the child support enforcement agency's ability to promptly disburse payments to the custodial parent.

The balance shall be deposited into the state treasury to the credit of the general fund."

2. By amending subsection (d) to read:

"(d) The court or office may approve an alternative arrangement for the direct payment of child support where either:

(1) The obligor or custodial parent demonstrates and the court or office finds that there is good cause not to require immediate withholding; or
(2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court or office, either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court's or office's conclusion."

SECTION 4. Section 576E-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) In exercising the powers conferred upon the attorney general in section 576E-2, the hearings officers shall have the authority to conduct hearings and enter the following orders:

(1) Child support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provisions of orders of the family courts;
(2) Child support orders establishing, modifying, suspending, terminating, or enforcing child support obligations;
(3) Orders enforcing the collection of spousal support when child support is being established, modified, or enforced;
(4) Income withholding orders pursuant to section 576E-16;
(5) Automatic income assignment orders pursuant to sections 571-52.2 and 576D-14;
(6) Interstate income withholding orders pursuant to chapter 576B;
(7) State income tax refund setoff orders pursuant to section 231-54;
(8) Orders determining whether Aid to Families with Dependent Children pass through payments were properly distributed;
(9) Orders determining whether a party should be required to post bond in order to secure payment of past due support pursuant to section 576D-6;
(10) Medical insurance coverage orders;
(11) Orders suspending or denying the granting, the renewal, the reinstatement, or the restoration of licenses or applications of an obligor or individual for noncompliance with an order of support or failure to comply with a subpoena or warrant relating to a paternity or child support proceeding, and authorizations allowing the reinstatement of suspended licenses or consideration of license applications pursuant to section 576D-13;
(12) Orders concerning whether a responsible parent's child support obligation should be reported to consumer credit reporting agencies pursuant to chapter 576D; [and]
(13) Orders permitting alternative arrangements pursuant to section 576D-10; and
(14) Orders in other child support areas as authorized by the attorney general."

SECTION 5. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever an administrative order is entered establishing, modifying, or enforcing support, establishing an arrearage that has accrued under a previous judicial or administrative order for support, or establishing a public assistance debt, there shall concurrently be issued an order which shall operate as an assignment to the agency for the benefit of the child or in the case of spousal support, for the benefit of a spouse or former spouse, of such amounts at such times as may be specified in the order, from the responsible parent's income due or to become due in the future from the responsible parent's employer, or successor employers, until further court or administrative order[.]; except when alternative arrangements are ordered pursuant to section 576D-10. A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued along with the copy of the support order as provided in section 576E-12."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Notes

1. Sentence should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 301 S.B. NO. 1016

A Bill for an Act Relating to Administrative Rules.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that until early last year, the Hawaii Administrative Procedure Act required agencies, as a part of the rulemaking process, to give copies of the proposed rulemaking action free of charge to persons who requested them. During the 1998 legislature, two measures were enacted that had an impact on fees charged for agency rules. The first, Act 2, Session Laws of Hawaii (SLH) 1998, required agencies adopting rules to mail copies of proposed rules to interested persons who requested them, but only after the person paid for the cost of the copy and postage, rather than free of charge as had previously been the case. In addition, Act 311, SLH 1998, raised the fee for reproducing government records from twenty-five cents a page to fifty cents a page.

The enactment of Acts 2 and 311, SLH 1998, led to confusion among many state agencies. Some questioned whether those amendments required them to charge for copies of rules. Others wondered whether the agencies could set their own fees, or whether the statutory fee set by Act 311 would apply. In a study conducted by the legislative reference bureau entitled "The Price of Access: Fees for Copies of State Administrative Agency Rules", the bureau found that for a variety of reasons, a significant majority of state agencies or programs did not want to charge, did not plan to charge, or would not charge for copies of rules unless required to do so by a higher or other external authority.

That requirement came in the form of a letter opinion from the attorney general dated September 21, 1998, in which the attorney general stated that by virtue of the amendments made by Acts 2 and 311, SLH 1998, agencies are now required to charge fees for copies of proposed rules, and that those fees must be at the rate of fifty cents a page. Agencies may waive the fees for other state agencies and, under section 92-28, Hawaii Revised Statutes, may reduce fees charged to the public by as much as fifty per cent (i.e., down to twenty-five cents per page), but only with the approval of the governor. The bureau's study determined that copies of rules could typically be produced for less than ten cents a page.

The legislature did not intend that fees for copies of rules be mandatory, and finds that these high fees, now interpreted to be mandatory, are a significant and unnecessary barrier to public access. At fifty cents a page, members of the public will have to pay $11 to $12 on average for a copy of proposed rules in a typical rulemaking action. In large rulemaking actions, the cost of a single copy could run to hundreds of dollars. These fees are simply not affordable to the average small business or private citizen. Further, since most state rules are not currently posted in electronic form, such as on the internet, the public has few alternative methods by which to obtain copies of proposed rules. Requiring all agencies to charge for copies

of rules simply does not make sense. A significant majority of state agencies and programs do not believe that it is in their best interests to charge for copies, for a variety of reasons. Agencies seeking the broadest possible dissemination of their proposed rules have no reason to establish cost barriers.

On the other hand, mandating free copies could be unfairly burdensome to agencies whose operations are required to be self-funding, or in other instances where the demand for copies is extremely high. Where the demand is high, agencies should at least have the option to print a large number of copies and charge fees to recover their costs, which, under the circumstances, may only be a few cents per page.

The legislature finds that authorizing, instead of requiring agencies to charge fees cuts through many of these problems. The ability of the agency to charge a higher fee, a lower fee, or no fee at all gives each agency the flexibility to determine what is in its own best interests. The legislature's intent is to ensure that any fees charged for copies, mailing, or both, do not constitute an unreasonable barrier to public access. The cost of producing copies of rules themselves, whether proposed or final, is not particularly high. The cost to agencies of staff time spent identifying and searching for rules for which copies are requested can be recovered through reasonable fees for searching, identifying, and segregating records to be copied. These types of fees and charges are now being standardized by the office of information practices in its proposed rules now pending approval by the governor.

Many of the problems involved in charging and collecting fees can be avoided altogether by utilizing alternatives ranging from agreements with private copying services to other forms of technology. The posting of agency rules, both proposed and final, on the internet holds a great deal of promise for promoting public access while bypassing the issue of charging and collecting fees for copies. A few agencies have already taken the initiative to establish websites that include their rules. Others plan to post their rules on the internet in the near or the distant future. Meanwhile, the lieutenant governor's office is implementing an ambitious project to coordinate executive agency efforts to post all final rules on the internet. The legislature wholeheartedly endorses and supports this project as a significant step forward in promoting public access to state administrative agency rules.

The purpose of this Act is to implement the recommendations of the legislative reference bureau's study by:

(1) Allowing rather than requiring agencies other than the office of the lieutenant governor to charge fees for copies of proposed and final rules at a rate of not more than ten cents a page, plus actual costs of mailing, if any;

(2) Clarifying that informational or educational publications that contain copies of statutes, agency rules, or both, are subject to the same fee considerations, and thus exempt from the statutory rate of fifty cents a page;

(3) Specifying that the fees for copies are separate from any reasonable charges for staff time spent searching for, identifying, or segregating the rules for which copies are requested; and

(4) Requiring state agencies, beginning January 1, 2000, to post public notices of proposed rulemaking actions and the full text of their proposed rules on the internet through the lieutenant governor's office.

These amendments are intended to make clear that agency rules, whether proposed or final, and related publications, must be available to the public at rates that are closer to actual reproduction costs, while giving agencies the flexibility to distribute copies free of charge if they so desire. Agencies would thus be able to use newer technologies such as fax machines or posting rules on the internet without having to try to recover mandated charges of arbitrary amounts. This is intended to

enable agencies to operate in the manner that they feel most appropriate, ensure that any fees allowed do not constitute unreasonable barriers to public access, and avoid the problems inherent in trying to create blanket exemptions for classes such as public interest, nonprofit, or tax exempt organizations. The one agency that is exempted from the fee requirement of ten cents per page is the office of the lieutenant governor for rules in its general collection (as opposed to the office's own rules). Making the lieutenant governor's general collection subject to the same fee of ten cents per page for copies could result in that office being overwhelmed by requests by any and every individual seeking to obtain copies of final rules for every state agency.

Requiring agencies to post the full text of their proposed rules on the internet through the office of the lieutenant governor is intended to:

(1) Expedite the efforts of the office of the lieutenant governor to post all final state agency rules on the internet by helping to ensure that all state departments have at least some staff capable of producing documents in the form needed for posting on the internet. The preparation for posting of proposed rules will provide earlier and more regular opportunities for departmental staffs to work with the office of the lieutenant governor in standardizing necessary procedures; and

(2) Simultaneously improve public access and reduce the need for agencies to provide paper copies by giving interested persons the alternative of downloading or printing the proposed rules from the internet, and being able to access the information from their home, their place of business, or a public library.

In many respects, the price of public access to its own governmental processes is tantamount to the price of democracy. The legislature intends that this price remain within reach for all.

SECTION 2. Chapter 91, Hawaii Revised Statutes, is amended as follows:

1. By adding two new sections to be appropriately designated and to read:

"**§91-A Fees for proposed and final rules.** (a) Notwithstanding any law to the contrary, each agency may charge up to a maximum fee of ten cents per page, plus the actual costs of mailing, for the reproduction of paper copies of the following:

(1) Proposed and final rules, whether new rules, amended rules, or repealed rules, in any format; and

(2) Notices of proposed rulemaking actions pursuant to section 91-3(a)(1).

This section shall not apply to the reproduction by the office of the lieutenant governor of other agencies' rules, kept in the general collection of the office of the lieutenant governor. Charges for the reproduction of paper copies of rules in the general collection of the office of the lieutenant governor shall be as stated in section 92-21.

(b) Informational or educational publications that are produced by agencies for noncommercial use and which contain copies of state statutes, proposed or final rules, or both, shall be subject to the same fees as specified in subsection (a).

(c) The fees specified in subsection (a) shall not include any charges for searching, identifying, or segregating rules in preparation for reproduction. Agencies may charge separate fees for these activities in accordance with rules adopted by the office of information practices.

§91-B Proposed rulemaking actions and rules; posting on the lieutenant governor's internet website. (a) Beginning January 1, 2000, all state agencies,

through the office of the lieutenant governor, shall make available on the website of the office of the lieutenant governor each proposed rulemaking action of the agency and the full text of the agency's proposed rules or changes to existing rules. The internet website shall provide instructions regarding how to download the information regarding proposed rulemaking actions and the full text of the agency's proposed rules.

(b) Each state agency, to the greatest extent feasible, shall:

(1) Ensure that all information pertaining to that agency that is contained on the lieutenant governor's website is current and accurate; and

(2) Advise individuals contacting the state agency of the availability of the proposed rulemaking actions and the full text of the agency's proposed rules on the lieutenant governor's website."

2. By amending section 91-3 to read:

"**§91-3 Procedure for adoption, amendment, or repeal of rules.** (a) Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

(1) Give at least thirty days' notice for a public hearing. The notice shall include:

(A) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and

(B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, pays [in advance] the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;

(C) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and

(D) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.

The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rulemaking proceedings, [and] given at least once statewide for state agencies and in the county for county agencies. Proposed state agency rules shall also be posted on the internet as provided in section 91-B; and

(2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date [as to] when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.

(b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals, or to livestock and poultry health, requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the internet as provided in section 91-

B, as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

(c) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the mayor of the county. [The provisions of this] This subsection shall not apply to the adoption, amendment, and repeal of the rules [and regulations] of the county boards of water supply.

(d) The requirements of subsection (a) may be waived by the governor in the case of the State, or by the mayor in the case of a county, whenever a state or county agency is required by federal provisions to adopt rules as a condition to receiving federal funds and the agency is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted; provided that the agency shall make the adoption, amendment, or repeal known to the public by [giving]:

(1) Giving public notice of the substance of the proposed rule at least once statewide prior to the waiver of the governor or the mayor[.]; and

(2) Posting the full text of the proposed rulemaking action on the internet as provided in section 91-B.

(e) No adoption, amendment, or repeal of any rule shall be invalidated solely because of [the]:

(1) The inadvertent failure to mail an advance notice of rulemaking proceedings [or the];

(2) The inadvertent failure to mail or the nonreceipt of requested copies of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed[.]; or

(3) The inadvertent failure on the part of a state agency to post on the website of the office of the lieutenant governor all proposed rulemaking actions of the agency and the full text of the agency's proposed rules as provided in section 91-B.

Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to section 91-7, that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule."

3. By amending section 91-4.1 to read:

"**§91-4.1 Rulemaking actions; copies in Ramseyer format.** Each state agency adopting, amending, or repealing a rule shall prepare a certified copy of the rule changes according to the Ramseyer format. Each state agency shall maintain a file of the copies in the Ramseyer format and shall make the file available for public inspection and copying at a [reasonable] cost[.] as specified in section 91-A."

4. By amending subsection (b) of section 91-5 to read:

"(b) Compilations and supplements shall be made available free of charge upon request by the state officers in the case of a state agency and by the county officers in the case of a county agency. As to other persons, each agency may fix a price to cover mailing and publication costs[.] as specified in section 91-A. Each state agency adopting, amending, or repealing a rule shall file a copy with the revisor of statutes."

SECTION 3. Chapter 92, Hawaii Revised Statutes, is amended as follows:

1. By amending section 92-21 to read:

"**§92-21 Copies of records; other costs and fees.** Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public, shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy. [The] Except as provided in section 91-A, the cost of reproducing any government record, except geographic information system digital data, shall not be less than 50 cents per page, sheet, or fraction thereof. The cost of reproducing geographic information system digital data shall be in accordance with rules adopted by the agency having charge or control of that data. Such reproduction cost shall include[,] but shall not be limited to[,] labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All fees shall be paid in by the public officer receiving or collecting the same to the state director of finance, the county director of finance, or to the agency or department by which the officer is employed, as government realizations; provided that fees collected by the public utilities commission pursuant to this section shall be deposited in the public utilities commission special fund established under section 269-33."

2. By amending section 92-24 to read:

"**§92-24 Directors of finance and commerce and consumer affairs; fees.** [The] Except as provided in section 91-A, the director of finance and the director of commerce and consumer affairs each shall charge the following fees:

(1) For administering any oath, $1;
(2) For preparing every photostat copy of any document on record in the director's office, 50 cents per page or portion thereof;
(3) For preparing every typewritten copy of any document on record in the director's office, 50 cents per page or portion thereof;
(4) For preparing a certificate of compliance, $5 for the original certificate, and $1 for each additional copy thereof, of which $4 from each certificate and 75 cents of each additional copy shall be deposited in the special fund referred to in section 415-128, and the balance deposited to the general fund of the State;
(5) For comparing any document submitted for certification, 15 cents per page or portion thereof;
(6) For certifying any document on record in the director's office, 25 cents for each certification;
(7) For all other acts and duties, the fees of which are not otherwise provided for, such charges as each may from time to time prescribe."

3. By amending section 92-28 to read:

"**§92-28 State service fees; increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

(1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 415, 421, 425, 431, 438, 439, 440, 442,

447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 572, 574, and 846 (pt II);

(2) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapters 304, 305, 306, and 308 shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;

(3) This section shall not apply to judicial fees as may be set by any chapter cited in this section; [and]

(4) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91[.]; and

(5) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-A."

SECTION 4. In codifying the new sections added to chapter 91, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 302

S.B. NO. 1262

A Bill for an Act Relating to Captive Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 to be appropriately designated and to read as follows:

"**§431:19- Classes of captive insurance.** Each captive insurance company formed under this article shall be designated and licensed as one of the following classes of captive insurance companies:

(1) A class 1 company shall be limited to a pure captive insurance company that only writes business as a reinsurer;

(2) A class 2 company shall be limited to a pure captive insurance company that is not a class 1 company;

(3) A class 3 company shall be any company formed under this article as an association captive insurance company or a risk retention captive insurance company; and

(4) A class 4 company shall be a leased capital facility formed under this article."

SECTION 2. Section 431:19-101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

""Leased capital facility" means a limited membership insurance company formed as a class 4 company under this article that insures the risks of its members, but whose owner or owners may, subject to approval of the commissioner, be persons or entities other than the members."

2. By amending the definition of "captive insurance company" to read as follows:

""Captive insurance company" means any pure captive insurance company, risk retention captive insurance company, [or] association captive insurance company, or leased capital facility formed or licensed under this article."

SECTION 3. Section 431:19-104, Hawaii Revised Statutes, is amended to read as follows:

"**§431:19-104 Minimum capital; letter of credit, security.** (a) [No pure captive insurance company, association captive insurance company, or risk retention captive insurance company] Subject to subsection (c), no captive insurance company incorporated as a stock insurer shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of an amount established and deemed appropriate by the commissioner. [The amount for pure captive insurance companies may differ from the amount for association captive insurance companies and risk retention captive insurance companies.]

(b) The capital may be in the form of cash, in the form of an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System, or other security approved by the commissioner.

(c) Minimum capital or surplus requirements for captive insurance companies shall be as follows:

(1) Class 1: $100,000;

(2) Class 2: $250,000;

(3) Class 3: $500,000 for risk retention captive insurance companies, and $750,000 for association captive insurance companies; and

(4) Class 4: $1,000,000.

The foregoing requirements do not limit the commissioner's discretionary authority to require a captive insurance company to possess and maintain a greater amount of capital or surplus in order to preserve the solvency of the company, nor do such requirements limit or diminish any other applicable provision of law that may require a captive insurance company to maintain a particular level of capital, surplus, assets, or investments."

SECTION 4. Section 431:19-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [No captive insurance company] Subject to section 431:19-104(c), no captive insurance company formed other than as a stock insurer shall be issued a license unless it shall possess and thereafter maintain a free surplus of an amount established and deemed appropriate by the commissioner. [The amount for pure captive insurance companies may differ from the amount for association captive insurance companies and risk retention captive insurance companies. The amount for association captive insurance companies and risk retention captive insurance companies incorporated as stock insurers may differ from the amount for association

captive insurance companies or risk retention captive insurance companies formed as mutual or reciprocal insurers.]''

SECTION 5. Section 431:19-106, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

''(b) [An association captive insurance company, including a risk retention] A captive insurance company, which is other than a pure captive insurance company, may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association; or

(3) Organized as a reciprocal insurer, for other than credit life and credit disability insurance and group term life insurance, without capital stock, whose affairs shall be coordinated through an attorney-in-fact as provided in the power of attorney or other agreement given to the attorney-in-fact by the subscribers.

(c) A captive insurance company other than one that is formed as a reciprocal insurer shall have [not less] no fewer than three incorporators of whom [not less] no fewer than two shall be residents of this State.''

SECTION 6. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

''(b) Each [association captive and risk retention] captive insurance company that is not a pure captive insurance company shall annually file with the commissioner the following:

(1) Annual statement and audit:

(A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. The reported information shall be verified by oaths of at least two of the captive's principal officers;

(B) On or before June 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive;

(C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practice and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. Each risk retention group shall also comply with section 431:3-302; and

(2) On or before each March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, a risk-based capital report in accordance with section 431:3-402[.]; provided that class 3 association captive insurance companies and class 4 captive

insurance companies shall not be required to file their risk-based capital reports with the National Association of Insurance Commissioners.

(c) The statements required to be filed in subsections (a) and (b) shall include[,] but not be limited to[,] actuarially appropriate reserves for:

(1) Known claims and expenses associated therewith;

(2) Claims incurred but not reported and expenses associated therewith;

(3) Unearned premiums; and

(4) Bad debts, reserves for which shall be shown as liabilities.

An actuarial opinion regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be included in the audited statements, except that the actuarial opinion for [association captive insurance companies and risk retention] captive insurance companies other than pure captive insurance companies shall be filed with the annual statement required under subsection (b), on or before March 1 each year. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners."

SECTION 7. Section 431:19-115,[1] Hawaii Revised Statutes, is amended to read as follows:

"(a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this section or article, shall apply to [pure captive insurance companies, association captive insurance companies, and risk retention] captive insurance companies[.] formed under this article.

In addition to this article, article 1, article 2, part III of article 3, article 4A, parts I and II of article 5, article 6, article 11, and article 15 of this chapter shall apply to [association captive insurance companies and risk retention] captive insurance companies[,] other than pure captive insurance companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article and the articles or portions thereof referenced in this section, chapter 431K shall apply to risk retention captive insurance companies licensed under this article.

(b) The application of the foregoing provisions shall not diminish the commissioner's authority for exemption as may be contained therein or as may be deemed appropriate under the circumstances.

In addition, the commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary in connection with the financial oversight and regulation of [association captive insurance companies, including risk retention] captive insurance companies."

SECTION 8. Section 431:19-116, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each [association captive insurance company licensed to do business in this State and each risk retention] captive insurance company chartered in this State as other than a pure captive insurance company shall pay a tax of one per cent on gross premiums for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 1 of each year."

SECTION 9. Act 190, Session Laws of Hawaii 1994, as amended by Acts 61 and 232, Session Laws of Hawaii 1995, and as amended by Act 358, Session Laws of Hawaii 1997, is amended by amending section 10 to read as follows:

"SECTION 10. This Act shall take effect on June 21, 1994; provided that on June 30, 2000, sections 1 through [4] 3 of this Act and section 431:2-307, Hawaii Revised Statutes, shall be repealed, and sections 431:3-302[,] and 431:5-307, [and 431:19-107,] Hawaii Revised Statutes, are reenacted in the form in which they read on June 20, 1994."

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 11. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 303 S.B. NO. 1421

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-34, Hawaii Revised Statutes, is amended to read as follows:

"**§231-34 Attempt to evade or defeat tax.** Any person who wilfully attempts in any manner to evade or defeat any tax imposed under title 14, or [the] its payment [thereof], in addition to other penalties provided by law, shall be guilty of a class C felony and, upon conviction [thereof], shall be [fined] subject to one or any combination of the following:

(1) A fine of not more than $100,000 [or imprisoned];
(2) Imprisonment of not more than five years[, or both]; or
(3) Probation;

provided that a corporation shall be fined not more than $500,000."

SECTION 2. Section 231-35, Hawaii Revised Statutes, is amended to read as follows:

"**§231-35 Wilful failure to file return, supply information, or secure a license.** Any person required to make a return, make a report, keep any records, supply any information, or secure [a] any license required under title 14, who wilfully fails to make the return, make the report, keep the records, supply the information, or secure the license, at the time or times required by law, shall in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction [thereof], shall be [fined] subject to one or any combination of the following:

(1) A fine of not more than $25,000 [or imprisoned];
(2) Imprisonment of not more than one year[, or both]; or
(3) Probation;

provided that a corporation shall be fined not more than $100,000."

SECTION 3. Section 231-36, Hawaii Revised Statutes, is amended to read as follows:

"**§231-36 False and fraudulent statements; aiding and abetting.** (a) Any person who wilfully makes and subscribes any return, statement, or other document required to be made under title 14, except chapter 238, which contains or is verified by a written declaration that it is true and correct as to every material matter, and which the person does not believe to be true and correct as to every material matter shall be guilty of a class C felony and, upon conviction [thereof], shall be [fined] subject to one or any combination of the following:

(1) A fine of not more than $100,000 [or imprisoned];
(2) Imprisonment of not more than three years[, or both]; or
(3) Probation;

provided that a corporation shall be fined not more than $500,000; and provided further that, if the person wilfully makes and subscribes any return, statement, or other document required to be made under chapter 238, which contains or is verified by a written declaration that it is true and correct as to every material matter and which the person does not believe to be true and correct, then the person shall be guilty of a misdemeanor and, upon conviction [thereof], shall be [fined] subject to one or any combination of the following:

(1) A fine of not more than $2,000[, or imprisoned];
(2) Imprisonment of not more than one year[, or both.]; or
(3) Probation.

(b) Any person who wilfully aids or assists in, or procures, counsels, or advises the preparation or presentation of any tax return, affidavit, claim, or other document required to be made under title 14, which is fraudulent or is false as to any material matter, regardless of whether the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document shall be guilty of a class C felony and, upon conviction [thereof], shall be [fined] subject to one or any combination of the following:

(1) A fine of not more than $100,000 [or imprisoned];
(2) Imprisonment of not more than three years[, or both]; or
(3) Probation;

provided that a corporation shall be fined not more than $500,000."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

ACT 304 S.B. NO. 1034

A Bill for an Act Relating to the Hawaii Tobacco Settlement Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Research has shown that cigarette smoking and tobacco use are the leading causes of preventable morbidity and mortality in Hawaii and the nation. In Hawaii, more than 1,300 residents die annually as a result of tobacco-related

illness which is sixteen per cent of all resident deaths. Tobacco-related illnesses also account for more than $320,000,000 in health care costs and expenditures of about $40,000,000 in Medicaid payments. The economic impact is substantial.

Smoking by women during pregnancy is likewise correlated with miscarriages, premature births, hospitalized child abuse cases, learning disabilities, and behavioral problems, and represents a major cause of illness and death among infants and children. Federal and state health objectives for the years 2000 and 2010, which offer a vision for the new century, call for improvements in health status. These improvements can be achieved through prevention, intervention, reductions in preventable death and disability, enhanced quality of life, and reduced disparities in the health of populations within Hawaii, the Pacific, and the nation.

The purpose of this Act is to establish the Hawaii tobacco settlement special fund with moneys received from the settlement from a class action lawsuit against the tobacco companies. The fund will serve as a medium for a public-private partnership to:

(1) Reduce tobacco consumption in Hawaii;
(2) Control and prevent chronic diseases where tobacco is a risk factor;
(3) Promote healthy lifestyles through better nutrition and improved physical activity; and
(4) Promote children's health.

The fund shall serve as a mechanism to maximize financial resources for tobacco prevention and control, health promotion and disease prevention programs, children's health programs, and to serve as a long-term source of stable funding for prevention-oriented public health efforts.

An emergency and budget reserve account is also established to provide the State with a financial reserve to be used when there is an emergency or economic downturn.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
HAWAII TOBACCO SETTLEMENT MONEYS

§ **-1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Children's health program" means health care for needy children.

"Department" means the department of health.

"Director" means the director of health.

"Health promotion and disease prevention programs" means those public health programs that attempt to reduce resources spent on treating preventable illness and functional impairment, enhance the quality of life, and reduce disparities in the health status of populations.

"Tobacco prevention and control" means activities or programs that attempt to reduce tobacco consumption.

"Tobacco settlement moneys" refers to moneys received by the State pursuant to the tobacco master settlement agreement.

§ **-2 Hawaii tobacco settlement special fund.** (a) There is established in the state treasury the Hawaii tobacco settlement special fund into which shall be deposited:

(1) All tobacco settlement moneys; and
(2) All interest and earnings accruing from the investment of moneys in the fund.

The Hawaii tobacco settlement special fund shall be administered by the department.

(b) The fund shall be used for the purpose of receiving and appropriating the tobacco settlement moneys as follows:

(1) Forty per cent shall be appropriated into the emergency and budget reserve fund under section -3;

(2) Thirty-five per cent shall be appropriated to the department for purpose of section -4; and

(3) Twenty-five per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section -5.

§ **-3 Emergency and budget reserve fund.** (a) There is established in the state treasury the emergency budget and reserve fund which shall be a special fund administered by the director of finance, into which shall be deposited:

(1) Forty per cent of the moneys received from the tobacco settlement moneys under section -2(b)(1);

(2) Appropriations made by the legislature to the fund.

(b) All interest earned from moneys in the emergency and budget reserve fund shall be credited to the general fund.

(c) Expenditures from the emergency and budget reserve fund shall be a temporary supplemental source of funding for the State during times of emergency, economic downturn, or unforeseen reduction in revenues. No expenditures shall be made from the emergency and budget reserve fund except pursuant to appropriations. The general appropriations bill or the supplemental appropriations bill, as defined in section 9 of article VII of the Constitution of the State of Hawaii, shall not be used to appropriate moneys from the emergency and budget reserve fund. The governor, through an appropriations bill, may recommend expenditures from the emergency and budget reserve fund by setting forth the purposes of the expenditures consistent with subsection (d), the amounts, and the reasons justifying the necessity for the appropriations.

(d) The legislature may make appropriations from the fund for the following purposes:

(1) To maintain levels of programs determined to be essential to the public health, safety, and welfare;

(2) To provide for counter cyclical economic and employment programs in periods of economic downturn;

(3) To restore facilities destroyed or damaged or services disrupted by disaster in any county; and

(4) To meet other emergencies when declared by the governor or determined to be urgent by the legislature.

Any act making appropriations from the emergency and budget reserve fund shall include a declaration of findings and purposes setting forth the purposes, the amounts, and the reasons why the appropriations are necessary and shall require a two-thirds majority vote of each house of the legislature.

(e) Appropriations for the following purposes from the emergency and budget reserve fund are specifically prohibited:

(1) To meet expenses of the legislature;

(2) To provide for salary adjustments for officials appointed pursuant to article V, section 6 or article VI, section 3 of the Constitution of the State of Hawaii and for others whose salaries are directly related to salaries of these officials; and

(3) To fund cost items in any collective bargaining contract.

§ -4 **Use of funds appropriated to the department.** The department, immediately upon receipt of the thirty-five per cent of moneys appropriated pursuant to section -2(b)(2) shall:

(1) Transfer up to ten per cent of the total moneys received by the State from tobacco settlement moneys to the department of human services for the children's health insurance program; and

(2) Expend the remainder of the moneys received by the department for health promotion and disease prevention programs, including but not limited to, maternal child health and child development programs, promotion of healthy lifestyles (including fitness, nutrition, and tobacco control), and prevention oriented public health programs.

For purposes of paragraph (2), the director shall convene an advisory group that shall be separate from the tobacco prevention and control advisory board, to strategically plan the development and implementation of preventive systems to achieve measurable outcomes and to make recommendations for the expenditure of these moneys. The advisory group shall be composed of nine members with expertise in the programs under paragraph (2), and shall be selected at the discretion of the director.

§ -5 **Hawaii tobacco prevention and control trust fund.** (a) There is established the Hawaii tobacco prevention and control trust fund as a separate fund of a nonprofit entity having a board of directors and qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, into which shall be deposited twenty-five per cent of moneys received as provided under section -2(b)(3). The director of health with the concurrence of the governor, shall select, in accordance with law, the entity based upon the proven record of accomplishment of the entity in administering a similar trust fund.

(b) Notwithstanding that the Hawaii tobacco and prevention and control trust fund is established within a private entity, the department of budget and finance shall have oversight authority over the fund and may make periodic financial audits of the fund; provided that the director of finance may contract with a certified public accountancy firm for this purpose. The director of health with the concurrence of the governor in their sole discretion may rescind the selection of the entity. If the selection of the entity in rescinded, moneys in the trust fund shall revert back to the State and shall be deemed to be trust moneys.

(c) The entity selected under subsection (a) shall expend moneys from the Hawaii tobacco prevention and control trust fund for tobacco prevention and control, including but not limited to, reducing cigarette smoking and tobacco use among youth and adults through education and enforcement activities, and controlling and preventing chronic diseases where tobacco use is a risk factor.

(d) The Hawaii tobacco prevention and control trust fund may receive appropriations, contributions, grants, endowments, or gifts in cash or otherwise from any source, including the State, corporations or other businesses, foundations, government, individuals, and other interested parties; provided that any appropriations made by the State shall not supplant or diminish the funding of existing tobacco prevention and control programs or any health related programs funded in whole or in part by the State.

(e) The assets of the Hawaii tobacco prevention and control trust fund shall consist of:

(1) Moneys appropriated under section -2(b)(3);

(2) Moneys appropriated to the Hawaii tobacco prevention and control trust fund by the state, county, or federal government;

(3) Private contributions of cash or property; and

(4) Income and capital gains earned by the trust fund.

(f) The aggregate principal sum deposited in the Hawaii tobacco prevention and control trust fund shall be invested by the entity selected under subsection (a) in a manner intended to maximize the rate of return on investment of the trust fund consistent with the objective of preserving the trust fund's principal.

(g) If the entity selected under subsection (a) is dissolved, the director of health, with the concurrence of the governor, shall select a successor entity. If the Hawaii tobacco prevention and control trust fund is terminated, the moneys remaining in the trust fund shall revert back to the State and shall be deemed to be trust moneys.

(h) The administration of the Hawaii tobacco prevention and control trust fund shall be advised by the tobacco prevention and control advisory board created under section -6.

§ **-6 Tobacco prevention and control advisory board.** (a) There is established a tobacco prevention and control advisory board under the department for administrative purposes.

(b) The tobacco prevention and control advisory board shall consist of members who are involved in tobacco prevention and control. Membership of the board shall be as follows:

(1) One member of the governor's staff, appointed by the governor;
(2) One member to be appointed by the governor from a list of two names submitted by the president of the senate;
(3) One member to be appointed by the governor from a list of two names submitted by the speaker of the house of representatives;
(4) The director or the director's designee;
(5) The superintendent of education or the superintendent's designee;
(6) Three members having demonstrated interest in and having backgrounds beneficial to controlling and preventing the use of tobacco, appointed by the director of health; and
(7) Three members representing populations at risk for tobacco use, appointed by the governor.

(c) Members shall:

(1) Be appointed or designated, as applicable, without regard to section 26-34;
(2) Serve without compensation; and
(3) Serve for a term of three years.

(d) The tobacco prevention and control advisory board, in collaboration with the department, shall develop a strategic plan for tobacco prevention and control, including:

(1) Developing and implementing effective and cost efficient programs, including health promotion and disease prevention;
(2) Developing adequate standards and benchmarks by which measures of program success under paragraph (1) of this subsection may be appropriately evaluated; and
(3) Assessing the effectiveness of programs engaged in health promotion and disease prevention.

The strategic plan shall be in writing and shall be a public document.

(e) The tobacco prevention and control advisory board shall advise the[1] on the administration of the Hawaii tobacco prevention and control trust fund."

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

(1) Special summer school and intersession fund under section 302A-1310;
(2) School cafeteria special funds of the department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
(6) Special funds established by section 206E-6;
(7) Housing loan program revenue bond special fund;
(8) Housing project bond special fund;
(9) Aloha Tower fund created by section 206J-17;
(10) Domestic violence prevention special fund under section 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;
(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;
(16) Hawaii health systems corporation special funds;
(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section [[]201B-11[]]; [and]
(19) Department of commerce and consumer affairs' special funds;
(20) Hawaii tobacco settlement special fund under section -2; and
(21) Emergency budget and reserve fund under section -3;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

(1) Transportation use special fund established by section 261D-1;
(2) Special summer school and intersession fund under section 302A-1310;
(3) School cafeteria special funds of the department of education;
(4) Special funds of the University of Hawaii;
(5) State educational facilities improvement special fund;
(6) Special funds established by section 206E-6;
(7) Aloha Tower fund created by section 206J-17;
(8) Domestic violence prevention special fund under section 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;

(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital special fund established under section 206X-10.5 and the convention center operations special fund established under section 206X-10.6;
(15) Hawaii health systems corporation special funds; [and]
(16) Tourism special fund established under section [[]201B-11[]];
(17) Hawaii tobacco settlement special fund under section -2; and
(18) Emergency and budget reserve fund under section -3;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 5. There is appropriated out of the Hawaii tobacco settlement special fund the sum of $5,777,903, or so much thereof as may be necessary, for fiscal year 1999-2000, and the sum of $15,436,031, or so much thereof as may be necessary, for fiscal year 2000-2001, to be deposited into the emergency and budget reserve fund.

SECTION 6. There is appropriated out of the Hawaii tobacco settlement special fund the sum of $5,055,665, or so much thereof as may be necessary, for fiscal year 1999-2001[1], and the sum of $13,506,527, or so much thereof as may be necessary, for fiscal year 2000-2001, to the department of health to be expended for the purposes specified in section -4, Hawaii Revised Statutes. The sums appropriated shall be expended by the department of health.

Of the appropriation for fiscal years 1999-2000, up to the sum of $1,400,000, and for fiscal year 2000-2001, up to the sum of $3,859,000, shall be transferred to the department of human services to be expended for the children's health insurance program; provided that the amount of moneys to be transferred shall not exceed the amount of moneys needed by the childrens health insurance program.

SECTION 7. There is appropriated out of the Hawaii tobacco settlement special fund the sum of $3,611,189, or so much thereof as may be necessary, for fiscal year 1999-2000, and the sum of $9,647,519, or so much thereof as may be necessary, for fiscal year 2000-2001, to be deposited into the Hawaii tobacco prevention and control trust fund.

SECTION 8. If any provision of this Act, or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which may be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 1999; provided that:
(1) The amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act shall not be repealed when those sections are reenacted on July 1, 2000, pursuant to section 13 of Act 216, Session Laws of Hawaii 1997; and
(2) The amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31,

2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved July 7, 1999.)

Note

1. So in original.

ACT 305

H.B. NO. 32

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow privately funded industrial hemp research to be conducted in Hawaii only when the department of public safety issues a controlled substance registration and the United States Department of Justice, Drug Enforcement Administration, issues a federally-controlled substance registration for research on the agronomic potential of industrial hemp.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§712- Affirmative defense for the possession or cultivation of marijuana.** (1) It shall be an affirmative defense to a prosecution for the possession or cultivation of marijuana under section 712-1247, 712-1248, 712-1249, 712-1249.4, or 712-1249.5 that:

(a) The defendant was conducting industrial hemp research pursuant to Act , Session Laws of Hawaii 1999;

(b) The defendant had valid controlled substance registrations from the department of public safety and the United States Department of Justice, Drug Enforcement Administration, to conduct the research; and

(c) The defendant has fully complied with all the conditions of the controlled substance registrations.

(2) This section shall not be an affirmative defense to a charge for the distribution of marijuana."

SECTION 3. As used in this Act, unless the context otherwise requires:

"Industrial hemp" and "cannabis" mean the schedule I substance marijuana as defined in section 329-1, Hawaii Revised Statutes.

SECTION 4. (a) The State may allow privately-funded industrial hemp research to be conducted in Hawaii when:

(1) The department of public safety issues a controlled substance registration; and

(2) The United States Department of Justice, Drug Enforcement Administration, issues a federally-controlled substance registration for research on the agronomic potential of industrial hemp.

(b) The department of public safety, in cooperation with the United States Department of Justice, Drug Enforcement Administration, and the appropriate county law enforcement agency, may monitor all phases of the industrial hemp research.

(c) During the course of the research, the principals responsible for the research shall:

(1) Submit a detailed copy of the research proposal and quarterly status reports to the appropriate county law enforcement agency; and
(2) Submit annual status reports to the legislature prior to the convening of each regular session.

SECTION 5. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect upon its approval, and shall be repealed on June 30, 2002.

(Approved July 7, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 306 S.B. NO. 1325

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
QUALIFIED IMPROVEMENT TAX CREDIT

§ **-1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Net income tax liability" means income tax liability reduced by all other allowed credits, as determined under chapter 235.

"Qualified general facility" means any building or improvement that is not a qualified resort facility.

"Qualified improvement costs" means any capitalized costs for construction and equipment of a permanent nature related to a qualified resort facility or a qualified general facility, including infrastructure costs, but shall not include the costs for which another tax credit was claimed for the taxable year.

"Qualified resort facility" means any building or improvement located or to be located:

(1) On property designated primarily for resort or hotel use by the applicable county zoning ordinances or general plan; or
(2) On property not so designated, but the primary purpose of which is for commercial or recreational use to support or service a hotel or resort use, such as a golf course, golf course clubhouse, or retail center.

§ **-2 Qualified improvement tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by chapters 235, 237, 237D, and 239, a qualified improvement tax credit, which shall be available to reduce the taxpayer's net income tax liability, general excise tax, transient accommodations tax, or public service company tax imposed by these chapters.

(b) The total amount of the qualified improvement tax credit shall be determined by applying the applicable credit percentage to the qualified improvement costs paid by the taxpayer in the taxable year. For qualified improvement costs to a qualified resort facility totalling $1,000,000 or more over a three-year period,

the applicable credit percentage shall be per cent. For qualified improvement costs to a qualified general facility totalling $1,000,000 or more over a three-year period, the applicable credit percentage shall be per cent.

(c) The tax credit allowed under this chapter may be taken over a period not to exceed ten consecutive taxable years. The taxpayer shall elect the period and annual allocation of the tax credit in the initial year for which the credit is claimed.

(d) In the case of a partnership, S corporation, estate, or trust, the allowable tax credit is for qualified improvement costs incurred by the entity for the taxable year. The costs upon which the tax credit is computed shall be determined at the entity level. Distribution and share of the tax credit shall be determined by rules adopted pursuant to section -4.

(e) If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for that portion of the qualified improvement costs for which the deduction is taken.

(f) The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowed and claimed under this chapter.

(g) The tax credit allowed under this chapter shall be claimed against any or all net income tax liability, general excise tax, transient accommodations tax, or public service company tax for the taxable years over which the credit is claimed.

§ **-3 No refund; failure to file.** If the amount of the tax credit claimed in any year exceeds the total of the taxpayer's net income tax liability, general excise tax, transient accommodations tax, or public service company tax payable for that taxable year, the excess of credit over liability shall not be refunded to the taxpayer. All claims for a tax credit under this chapter shall be filed on or before the end of the twelfth month following the close of the initial taxable year for which the credit may be claimed. Failure to comply with this section shall constitute a waiver of the right to claim the credit.

§ **-4 Forms; rules.** The director of taxation shall prepare forms as may be necessary to claim a tax credit under this chapter. The director of taxation may also require the taxpayer to furnish information to ascertain the validity of a claim for a tax credit made under this chapter and may adopt rules necessary to effectuate the purposes of this chapter pursuant to chapter 91.

§ **-5 Limitation period.** The tax credit allowed under this chapter shall be available for qualified improvement costs incurred during taxable years beginning after December 31, 1998, and before January 1, 2006."

SECTION 2. Notwithstanding any statute, rule, ordinance, or law to the contrary, any impact fees imposed upon a project, the costs of which qualify for and are claimed as a tax credit under this Act, shall be collected over a seven-year period, interest-free, commencing with the completion of the project. For purposes of this section, "impact fees" means the charges imposed upon a developer by the state or a county to fund all or a portion of the public facility capital improvement costs required by the development, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of the development.

SECTION 3. This Act shall take effect upon its approval; provided that section 1 of this Act shall apply to taxable years beginning after December 31, 1998. Section 2 of this Act shall be repealed on January 1, 2006.

Note

(Became law on July 9, 1999, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

COMMITTEE REPORTS

ON BILLS WHICH BECAME ACTS

TABLES SHOWING EFFECT

OF ACTS

GENERAL INDEX

COMMITTEE REPORTS ON BILLS WHICH BECAME ACTS

This is a compilation of committee reports on bills which became acts during the 1999 Regular Session of the Twentieth State Legislature.

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[7]See also Floor Amendment Number 9.

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1999 Regular Session

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